

## Jefferson County Commission

# RESOLUTION

**WHEREAS:**

The Jefferson County Commission has been awarded \$75,000 under the West Virginia Development Office Community Development Block Grant Program for the Jefferson County Broadband Strategic Plan;

**WHEREAS:**

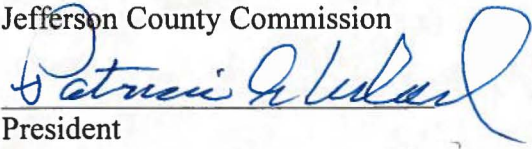
the Commission of the Jefferson County is in support of the Community Development Block Grant Program to develop a county-wide broadband strategic plan;

**THEREFORE,  
BE IT RESOLVED:**

the Commission accepts the conditions of the contract and the Commission President is hereby authorized to execute said agreement and any other necessary documents on behalf of the Commission, and be empowered to sign the contract and any agreement necessary to obtain these funds.

Approved and adopted this 30 day of May, 2019.

Jefferson County Commission

  
President



**COMMUNITY DEVELOPMENT BLOCK GRANT- GRANT AGREEMENT**

**THIS COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT ("Agreement")**, dated and effective April 1, 2019, is between the West Virginia Development Office, a division of the West Virginia Department of Commerce ("State"), and the Jefferson County Commission and its authorized officers, agents, and representative ("Grantee").

**RECITALS**

A. **WHEREAS**, September 12, 2018, HUD approved the State's Annual CDBG Action Plan, which addresses infrastructure needs;

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

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

D. **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, and subject to the scope of the State of West Virginia's CDBG Policies and Procedures Manual and other Program Guidelines, availability of which is hereby acknowledged by the Grantee.

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

F. **WHEREAS**, the Grantee has prepared a written citizen's participation plan which provides opportunities for citizen participation, hearings, and access to information with respect to the proposed project statement in such a manner as to afford affected citizens an opportunity for examination and comment regarding the proposed project and on the community development performance of the Grantee, a Community Development Plan, and an Anti-displacement and Relocation Assistance Plan.

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

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

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

1. **Assistance to Grantee.** The State shall obligate to the Grantee, from funds allocated to the State by Grant Agreement B-18-DC-54-0001, \$75,000 to perform such tasks hereafter described in the Scope of Services ("Project"). Funds are provided under the HUD regulations for Planning and Capacity Building activities, including the costs of data gathering, studies, analysis, and the identification of actions to implement plans, as defined under 24 CFR 570.205.

A) **Budget.**

- i. The final budget allocation for the Project is attached hereto as the *CDBG-SCBG Budget Amendment (Form 3-6)* as Exhibit I 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. If necessary and upon request, the State may, as required by CDBG Rules, require a more detailed or supplementary Budget breakdown, and the Grantee shall provide such detailed or supplementary Budget information in a timely fashion in the form and content prescribed by the State.
- ii. In accordance with the CDBG Rules, the Grantee shall cause the Budget to be in sufficient detail to provide a sound basis for the State effectively to monitor Grantee's performance under this Agreement and to meet the requirements set forth in the CDBG Rules that must be complied with to allow payments of program funds to the Grantee.

2. **Scope of Services.** The Grantee, its contractors and/or its designated agent(s), in accordance

with the Community Development Block Grant Policies and Procedures and other Program Guidelines to be used in the administration of the 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 to assist the Jefferson County Commission in the development of a comprehensive county-wide broadband plan to provide strategies that will lead to the deployment of broadband projects, notably in underserved and unserved areas, with an emphasis on identifying project areas that would qualify for infrastructure funding under the HUD CDBG program and other broadband-specific funding programs.

- i. The Grantee 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-SCBG Project Schedule (Form 1-1) attached hereto as Exhibit II and fully incorporated by reference ("Performance Measures")*.
- ii. The State shall monitor the performance of the Grantee and Grantee's Contractors' 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. If action to correct such substandard performance is not commenced by the Grantee within thirty (30) Days (or such other time period, if any, required by HUD or as set forth by the State in the written notification) after receiving written notification by the State and diligently pursued to completion by Grantee, the State may initiate contract suspension or termination procedures.

3. **Changes.** The State will consider program amendments initiated by the Grantee 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. The Grantee, from time to time, may require changes in the Scope of the Services of the work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Grantee's compensation and work to be performed which are mutually agreed upon by and between the State and the Grantee, shall be incorporated in written amendments to this Contract. **Major changes in the Scope of Services attached hereto as Schedule**



II which substantially deviate from that originally approved shall require the same citizen participation process as performed for the initial submission of the grant proposal. The State reserves the right to make final determination on questions/*requests* regarding changes in the Scope of Services.

4. **Term of Agreement (Time of Performance). Term.** The term of this Agreement (the "Term") commences on the Effective Date and expires on June 30, 2020, or such later date as the Parties may agree to in a signed 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.

5. **Performance Measures and Spending Milestones.**

A) **Performance Measures.** All funding necessary to complete this project should be secured at the awarding of this grant. Performance measures establish that the Grantee should complete design and engineering within three months, and construction should be started within nine months of this award. Achievement and compliance with the performance measures will be evaluated based upon the *CDBG-SCBG Project Schedule (Form 1-1)* attached hereto as Exhibit II and fully incorporated by reference ("*Performance Measures*"). These Performance Measures establish goals against which performance under this contract can be measured and evaluated during regular scheduled monitoring visits by the State. Failure to meet these Performance Measures can result in termination of this contract and/or *prohibit Grantee from being eligible to submit an application for future fiscal year allocations until such time as outlined situations are resolved.*

B) **Spending Milestones.** By no later than the dates listed in the table below in the column entitled "Spending Milestones," Grantee must submit a Request for Payment, as detailed in this Agreement, that complies with the terms of this Agreement incurred in the cumulative minimum amounts listed in the column below entitled "Minimum Amount."

Cumulative Minimum Spending Milestones	Dates
10 percent	December 30, 2019
30 percent	February 27, 2020
100 percent	June 30, 2020

C) If the Grantee fails to comply with Section 5(B), the State shall provide notice and an opportunity to cure within 30 days or such other reasonable time as may be specified in the notice. If the Grantee fails to cure such non-compliance with Section 5(B) within the time provided by the State, the State shall have the discretion to take one or more of the following actions:

1. Require additional project monitoring to ensure compliance with Section 5(B).
2. Require Grantee to obtain technical or management assistance in order to ensure compliance with Section 5(B).
3. Reduce the Program Funds to be disbursed under this Agreement in an amount not to exceed the difference between the full amount awarded for the Project and the total amount for which the Grantee has submitted a Request for Payment that is compliant with section 5(B) as of the date of the expiration of the cure period specified in Section 5(B) and require Grantee to revise the Budget based on the reduction of Project funds, such Budget revision to be approved by the State.

Failure to comply with Section 5(B) shall not constitute an Event of Default.

6. **Administrative Requirements and Procedures.**

A) *Personnel.* The Grantee represents that it has or will secure 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, consistent with the procedures identified in the Community Development Block Grant Policies and Procedures Manual.

B) *Applicable Law.* The Grantee, its agents, and subrecipients shall comply with all the restrictions, conditions, policies, guidelines, and requirements of Title I of the Housing and Community Development Act of 1974 (Public Law 93-383), as amended; with all current applicable State and Federal Laws and regulations as may be amended, including 24 CFR Part 570; 2 CFR Part 200 as applicable, in administering and distributing funds provided under this Agreement including, but not limited to, the following:

i. 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.

ii. 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 Grantee further certifies that it will take actions necessary to affirmatively further fair housing.

iii. 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.

iv. 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.

v. 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.

vi. Section 110 of P.L. 93-383 requires compliance with the Davis-Bacon Act, as amended (40 U.S.C. 276a - 276a-5). By reason of the foregoing requirement, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et. seq.) also applies.

vii. **Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701U) requiring that to the greatest extent feasible opportunities for employment and training be given to lower income persons residing within the unit of local government or metropolitan area or nonmetropolitan county in which the project is located, and that Contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing in the same area.**

7. **Section 3 Responsibilities of the Grantee.** Each Grantee has the responsibility to comply with Section 3 throughout this Project, and ensure full Section 3 compliance from its contractors and subcontractors having contracts greater than or equal to an amount of \$100,000.00. Section 3 responsibilities include but are not limited to:

A) Implementing procedures designed to notify Section 3 residents about training and employment opportunities generated by Section 3 covered assistance and section 3 business concerns about contracting opportunities generated by section 3 covered assistance;

B) Notifying potential contractors for Section 3 covered projects of the requirements of this part, and incorporating the Section 3 clause set forth in §135.38 in all solicitations and contracts related to this Project;

C) Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by undertaking activities such as described in the Appendix to this part, as appropriate, to reach the goals set forth in §135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of Section 3 residents and contract award to Section 3 business concerns that exceed those specified in §135.30;

D) Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR part 135;

E) Documenting actions taken to comply with the requirements of this part, the results of actions taken and impediments, if any.

F) A State or county which distributes funds for Section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in §135.30 regardless of the number of local governments receiving funds from the Section 3 covered assistance which meet the thresholds for applicability set forth at §135.3. The State or county must inform units of local government to whom funds are distributed of the requirements of this part; assist local governments and their contractors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this part.

**G) Incorporating the following Section 3 clauses into every contract or agreement that is entered into as a result of this Project. Pursuant to 24 CFR Part 135.38:**

i. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

ii. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

iii. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

iv. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 4 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

v. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

vi. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

H) Executive Order 11246, as amended by Executive Order 12086 shall apply and provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts.

I) Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831b) prohibits the use, and requires the elimination and/or abatement of the hazards of lead-based paints in residential structures constructed or rehabilitated with Federal assistance to include notification of the hazards of lead-based paint. The Lead Safe Housing Regulation (24 CFR Part 35) established the requirements for notification, evaluation, and reduction of lead-based paint hazards in federally-owned residential property and housing that receives federal assistance.

**J) The Grantee 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.**

i. In addition to assuming responsibility for National Environmental Policy Act (P.L. 91-190), the Grantee 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 Grantee 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 Grantee must submit all requested Evidentiary Material to the State for approval prior to the obligation of any funds.**



ii. In accordance with 24 C.F.R. Part 58.22, **the Grantee** agrees to refrain from undertaking any physical activities or choice limiting actions until the State has accepted the project's environmental review. Choice limiting activities include acquisition of real property, leasing, repair, rehabilitation, demolition, conversion, or new construction. This limitation applies to all parties in the development process, including public or private nonprofit or for-profit entities, or any of their contractors.

iii. 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.

iv. The Grantee 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.

v. Until the State has approved the environmental review for the project, neither the Grantee 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.

vi. The Grantee 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.

vii. The Grantee 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.

K) The Uniform Relocation Assistance (URA) and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601) and HUD implementing regulations at 24 CFR Part 42 apply to the acquisition of real property for an activity assisted under this part and to the displacement of any family, individual, business,

nonprofit organization or farm that results from such acquisition. The West Virginia Code, Chapter 54-3 also applies. The Grantee must certify compliance with URA. Under Section 104(d) of the Act, each Grantee must adopt, make public and certify that it is following a residential anti-displacement and relocation assistance plan providing one-for-one replacement units and relocation assistance. The plan must also indicate the steps that will be taken to minimize the displacement of persons from their homes as a result of any activities assisted under this part all in accordance with 24 CFR Part 570.488(b).

L) The State and the Grantee will comply with the provisions of the Department of Treasury Circular 1075 and/or the CDBG Policies and Procedures Manual, as revised, in the process of requesting and administering funds from the State's Letter of Credit.

M) Funds provided under this agreement shall not be expended for acquisition or construction purposes in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program; and flood insurance is obtained in accordance with Section 102(a) of the Flood Disaster Protection Act of 1973.

#### 8. **Licensure and Registrations**

- A) **Good Standing:** The Grantee certifies that it and its Project Sponsors are registered and licensed to do business in the State of West Virginia. The Grantee and its employees and all Project Sponsors shall be licensed pursuant to all applicable federal, state and local laws, ordinances, rules and regulations and shall upon request provide proof of all licenses.
- B) **Additional Administrative Requirements:** Additional administrative requirements of federal grants are contained in 2 CFR, Part 25. The Grantee and Project Sponsors at all tiers must obtain a DUNS number and provide the DUNS to the State before the sub-award can be issued. As of May 2012, the Central Contractor Registry (CCR) along with several other procurement systems were incorporated into a single website called the System for Award Management (SAM). The SAM site is located at <https://www.sam.gov/sam/>. The Grantee will register with SAM and furnish State with documentation verifying such registration in order to receive federal funding under this Agreement.
- C) **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 Grantee and Project Sponsors should be aware of this identification number and ensure the FAIN is incorporated into all sub-grants under the Agreement.

9. **Accounting.** The Grantee shall undertake the obligations concerning financial management relating to the services set forth in the Scopes of Services. The Grantee 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 Grantee 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 Grantee 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 Grantee 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 Grantees 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 Grantees responsibility to notify the state of all PI earned in any given fiscal year from this date forward.*

10. **Audit.** Pursuant to provisions of Chapter 6, Article 9, Section 7 of the West Virginia Code, the Community Development Division has adopted the policy of accepting annual financial audits contracted or performed by the State Auditor's Office. The Grantee 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 Grantee 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 Grantee, the procurement thresholds, and the conditions and requirements. In accordance with 2 CFR 200, the Grantee 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.

11. **Public Inspection of Audit Reports.** Units of local government will make audit reports available for public inspection within thirty (30) days after the completion of the audit. This includes submission of report package to the West Virginia Development Office and to the Federal Clearinghouse currently designated by OMB. The address of the clearinghouse is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10<sup>th</sup> Street, Jeffersonville, IN 47132. Auditees are required to submit through the Federal Audit Clearinghouse Web site. The FAC IDES Web site is located at: <https://harvester.census.gov/facides/>.

12. **Record Retention.** Records shall be maintained in accordance with requirements prescribed by or in 2 CFR § 200.333, HUD and/or the State with respect to all matters covered by this Agreement and retained for at least three years after the State makes final payments and all other pending matters concerning this Agreement are closed, subject to the exceptions in 2 CFR § 200.333:

A) If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

B) Records for nonexpendable property acquired with Federal funds shall be retained for three years after its final disposition.

C) Records for displacement shall be retained in accordance with the CDBG Policies and Procedures Manual.

D) The retention period starts from the date of the issuance of the final audit report.

13. **Access to Records.** The Grantee 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 Grantee with respect to the matters covered by this Contract. All negotiated contracts awarded by the Grantee 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.

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

15. **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.

A) With respect to the purchase by Grantee 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:

i. **Compliance.** If the Grantee uses Project funds to purchase any equipment from contractors, the Grantee 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.

ii. **Procurement Standards.** If the Grantee procures any project equipment, property or services from any contractors with program funds, unless specified otherwise within this Agreement, the Grantee shall undertake such procurement in accordance with the requirements of 2 CFR Part 200, Subpart D, sections 200.317-200.326.

B) Policies and Procedures. Grantee shall incorporate the provisions of 2 CFR 200.318-200.326 into its Procurement Policies, Procedures and Practices. Grantee shall fully comply with Appendix II of 2 CFR 200 and incorporate such federal contracting provisions in all contracts as required thereunder.

C) 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.

D) 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.

E) 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.

F) 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.

16. **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:

A) 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.



B) 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.

C) 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.

17. **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).

18. **Conflict of Interest.** No officer, agent, consultant, employee, elected or appointed official of the State, the Grantee, 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 apply as appropriate.

19. **Recovery of Capital Costs.** The Grantee will not attempt to recover any capital costs of public improvements assisted in whole or in part with funds from this program by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements unless: (a) funds received are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from other revenue sources; or (b) for purposes of assessing any amount against properties owned and occupied by persons of low and moderate income who are not persons of very

low income, the Grantee certifies to the State of West Virginia that it lacks sufficient funds received under the program to comply with the requirements of clause (a).

20. **Method of Payment.** In order to receive any and all payments under the terms of this Agreement, the Grantee shall submit the following a Request for Payment Financial Report containing a progress report. Upon receipt, the State shall review for reasonableness, appropriateness and eligibility and, if approved, will cause a warrant to be made on that sum to the Grantee for authorized expenditures from the State's Letter of Credit with the Department of Housing and Urban Development.

21. **Cost Underruns.** The State reserves the right to recapture all CDBG funds remaining due to cost underruns.

22. **Termination of Agreement for Cause; Options to State in an Event of Default.** Pursuant to 2 CFR 200.338, if the Grantee 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.

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

(a) **Termination or Suspension.** Pursuant to the applicable general requirements of law (including Section 570.502 of the CDBG Rules), prior to the end of the Term and subject to the applicable notice and cure periods, this Agreement may be terminated, or temporarily suspended.

(b) **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 Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on the described project.

23. **Termination for Convenience of the State.** The State may terminate this Contract at any time by giving written notice to the Grantee of such termination and specifying the effective date of termination. If the

Contract is terminated by the State as provided herein, the Grantee will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this Contract, less payments of compensation previously made.

This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the State shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments

24. **Termination by the Grantee.** The Grantee may unilaterally rescind this Agreement at any time prior to the commencement of the project. After project commencement, this Agreement may be rescinded, modified, or amended only by mutual agreement. A project shall be deemed commenced when the State makes any expenditure or incurs any obligation with respect to the project.

25. **Reporting.** 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 CDBG Policies and Procedures Manual 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.

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

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

28. **Notice.** The parties hereto agree that notice shall be served when mailed certified U.S. Mail to the following addresses:

West Virginia Development Office  
Community Development Division  
Capitol Complex  
Building 6, Room 553  
Charleston, West Virginia 25305-0311

Jefferson County Commission  
24 E. Washington Street  
Charles Town, West Virginia 25414

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

STATE OF WEST VIRGINIA  
WEST VIRGINIA DEVELOPMENT OFFICE

\_\_\_\_\_  
Michael R. Graney, WVDO Executive Director

\_\_\_\_\_  
DATE

JEFFERSON COUNTY COMMISSION

  
\_\_\_\_\_  
By: Patsy Noland, Commission President

6/3/2019  
\_\_\_\_\_  
DATE