

**COMMUNITY DEVELOPMENT BLOCK GRANT - DISASTER RECOVERY  
SUBRECIPIENT AGREEMENT BETWEEN  
WEST VIRGINIA DEPARTMENT OF ECONOMIC DEVELOPMENT  
AND  
25045- A NEW CLENDENIN, INC.  
FOR  
RESTORE RIVERVIEW PROGRAM;  
RESTORE RIVERVIEW BUILDING ONSITE**

THIS AGREEMENT is entered 24th day of March, 2022 by and between the West Virginia Department of Economic Development Office, herein called the "Grantee") and 25045-A New Clendenin, Inc. (herein called the "Subrecipient") which is authorized to do business in the State of West Virginia.

**I. RECITALS**

WHEREAS, Pursuant to Public Law 114-223 and the *Federal Register* Notice dated, November 21, 2016, (81 FR 83254); and pursuant to Public Law 114-245 and the *Federal Register* Notice dated, January 18, 2017, (82 FR 5591) pursuant to Public Law 115-31 and the *Federal Register* Notice dated, August 7, 2017, (82 FR 36812); the U.S. Department of Housing and Urban Development ("HUD") has awarded \$149,875,000 in Community Development Block Grant Disaster Recovery (CDBG-DR) funds to the West Virginia Economic Development Office for activities authorized under title 1 of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) and described in the West Virginia Disaster Recovery Action Plan Amendment 2; and any other amendments approved by HUD and relating to the activities described herein;

WHEREAS, the Grantee is the agency responsible for administering the CDBG-DR funds on behalf of the State of West Virginia for the RESTORE RIVERVIEW PROGRAM; RESTORE RIVERVIEW BUILDING ONSITE in response to the WV 2016 FLOOD EVENT;

WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds to carry out a part of the Grantee's Federal CDBG-DR award by committing up to \$2,463,000 (the "subaward") of the Grantee's Federal award, which includes acquisition cost, preconstruction cost and rehabilitation, to make available for rental the 10 apartment units located on the 3<sup>rd</sup> floor of the Riverview Building;

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

WHEREAS, this Agreement is intended for the purpose of engaging Subrecipient and thereby provide acquisition and rehabilitation to restore multifamily housing and community space of the three-story Riverview Building, located at 107 Koontz Ave, in Clendenin, West Virginia;

WHEREAS, this Agreement will follow restrictions in compliance with applicable FEMA Floodplain Ordinances, State Floodplain Ordinances, County Floodplain Ordinances, and the Environmental Review Record. No residential units will be replaced on the first floor of the building which is below the base flood elevation. Also, no permanent equipment valued greater than \$5,000 will be placed on the first floor. Any FEMA floodplain ordinance variance will be followed.

WHEREAS, the Subrecipient has legal authority to enter into this Agreement, and the Subrecipient's governing body has duly adopted the motion to grant signature authority by 25045-A New Clendenin Board of Directors, Minutes dated March 16, 2022 authorizing the Subrecipient to enter this agreement with the Grantee, and by signing this agreement, to assure the Grantee that it will comply with all the requirements of the subaward described herein; and

NOW, THEREFORE, in consideration of the need for recovery from the West Virginia June 2016 Floods responsible for the Presidential Disaster Declaration 4273 and the promises and mutual covenants described herein, the parties mutually agree to the terms described in this Agreement.

## **II. GENERAL AWARD INFORMATION**

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

### **Contact Information:**

Grantee Contact:  
Jennifer Ferrell

Subrecipient Contact:  
Kenneth Tawney

Title:  
Director, WV CAD

Title:  
Chairman

Grantee Name:  
West Virginia Department of Economic  
Development

Grantee Name:  
25045-A New Clendenin, Inc.

Address:  
1900 Kanawha Blvd. E  
Building 3, Suite 700

Address:  
P.O. Box 421

City, State, ZIP:  
Charleston, WV 25305

City, State, ZIP:  
Clendenin, WV 25045

Telephone:  
304-558-2234

Telephone:  
(304) 553-5203

Fax Number:  
304-558-2246

Fax Number:  
N/A

**Federal Award Identification Number:** B-16-DL-54-0001

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

**Federal Award Date:** September 15, 2017

**Indirect cost rate for the Federal award:**

CDBG-DR grant funds will not be used for payment of indirect costs pursuant to 2 CFR part 200, subpart E – Cost Principles.

**Federal award project description:**

The West Virginia June 2016 flood event resulted in substantial damage throughout the state. The Grantee will use the CDBG-DR award to meet WV's most pressing unmet housing needs affected by the flooding through the following programs.

1. WV Housing Restoration – Provide grants for the repair, rehabilitation, or reconstruction of single-family owner-occupied homes to low- to moderate-income (LMI) households.
2. WV Rental Assistance – Provide grants for the reconstruction or rehabilitation of small rental properties (typically 1-4 units) that will assist renters earning less than 80% area median income.

3. Multifamily Rental Housing Program – Provide Grant Funds for the repair, rehabilitation, reconstruction, or new construction of housing units that will have at least 51% of the units occupied by LMI households.
4. Hazard Mitigation Grant/CDBG-DR Match – Combine FEMA’s Hazard Mitigation Grant Program with Grant Funds for use with resilience projects that reduce risk to future disasters to life, private property, and/or public infrastructure.
5. Bridge Home – Assist homeowners in the repair of their non-county-maintained bridge, damaged or destroyed by the floods, that is the only access point to their homes.
6. Restore Riverview Program (Clendenin) – Relocate the damaged first-floor rental units, restore the rental units on the third floor, and rehab the first floor.
7. WV Clearance and Demolition Program – Remove structures damaged by and designated as slum and blight due to the 2016 floods.
8. WV Community and Economic Development – Assist communities in promoting and economic development projects.

The Subrecipient will be responsible for administering the CDBG-DR award for the Restore Riverview Program; Restore Riverview Building Onsite Project, 1<sup>st</sup> and 3<sup>rd</sup> floor rehabilitation. Cost projections include resiliency measures to reduce future energy consumption and will utilize ENERGY STAR where available. This activity will be conducted in Kanawha County, Clendenin, at the Riverview building.

The goal of the Subrecipient’s efforts under this Agreement will be to restore affordable rental housing and community space to Clendenin. The Subrecipient’s obligations under this Agreement shall include but are not necessarily limited to,

- 1) HVAC repairs needed to restore third floor to housing space, apartments 1 through 10, HVAC repairs for remaining of building to provide resiliency and reduction of energy consumption.
- 2) Electric repairs needed to restore third floor to housing space, apartments 1 through 10, electrical repairs for remaining of building to provide resiliency and reduction of energy consumption.
- 3) Additional agreed upon renovations for ten units located on the 3<sup>rd</sup> floor with submitted estimated cost of repair, to be approved by Grantee and approved Environmental Review Record.
- 4) Elevate HVAC, mechanical, and electrical 2 feet above base flood elevation (631.6) of 100-year flood plain on the 1<sup>st</sup> floor.
- 5) Renovations to the 1<sup>st</sup> floor level of the Riverview Building as approved by the Grantee Environmental Review Record, to include resilient and protective measures
- 6) Mold removal and remediation; and

7) Upon completion of the repairs and rehabilitation of the 3<sup>rd</sup> floor at the Riverview building to housing space apartments 1-10, Subrecipient shall be required to rent said apartments at a rate/monthly rent up to a maximum of HUD's fair market rent or a lesser amount to ensure they are occupied by low to moderate income families through the compliance of the NSP requirements. The Final Inspection was completed on the building February 2, 2012 and the NSP apartments were no longer in use as of June 24, 2016. This leaves the affordability period approximately 11 Years and 8 Months on a 15 year affordability period. Fair market rent can be found at:  
[https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022\\_code/2022summary.odn](https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022_code/2022summary.odn)

**Is this award for research and development? No**

**Subrecipient's unique entity identifier: DUNS Number: 147371699**

**Subaward Period of Performance: 07/01/2021 to 06/30/2024**

**Total Amount of the Federal Award Committed to the Subrecipient by the Grantee:  
\$2,463,000**

**Amount of Federal funds obligated by this agreement: \$2,463,000**

**Total Amount of Federal Funds Obligated to the Subrecipient: \$2,463,000**

**Indirect cost rate applicable to the Subaward to the Subrecipient:** The subaward will not include an indirect cost rate that can be utilized by the Subrecipient.

### **III. SCOPE OF SERVICE**

#### **A. Eligible Use of Funds**

As a condition of receiving this subaward, the Subrecipient shall administer the *Restore Riverview Building Onsite Project*, which includes performing all the work described in this section. The Subrecipient shall complete the activities in a manner reasonably satisfactory to the Grantee and consistent with the terms of conditions of this Agreement and applicable Federal statutes and regulations.

#### **Prohibited Activities**

The Subrecipient may use grant funds only to carry out the activities described in this Agreement. The Subrecipient is prohibited from charging to the subaward the costs of CDBG 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.

## **Program Delivery for CDBG Eligible Activities eligible under HCDA Sections 105(4))**

Subrecipient shall undertake and complete the activities pursuant to the terms of this Agreement, which provides a description of each activity including the services to be performed, identifies the person or entity providing the services, and the recipients of the services. Subrecipient will notify and seek approval from the Grantee prior to rehabilitation and assist with developing an amendment to this Agreement if needed.

Grant Funds have been allocated to help preserve multifamily rental housing and community space for low to moderate income persons in areas affected by the 2016 floods. Assistance will be provided through multifamily activities including, but not limited to, the rehabilitation of the Riverview building.

To accomplish the activity, the Subrecipient will perform the following, not all inclusive: Acquisition; Pre-Construction estimates for cost to repair and rehabilitate 3<sup>rd</sup> floor to housing space, apartments 1-10; Pre-Construction Delivery Activities; Administrative duties (limited); submission of bids for repair and rehabilitation of 3<sup>rd</sup> floor to housing space apartments 1-10; Rehabilitation to include resiliency measures; Environmental Review Record; Rehab oversight; draw requests; closeout reports; marketing plans; rental unit management; income verification upon LMI initial occupancy of unit; annual HQS inspection; etc.

### **Pre-Award Costs**

Subrecipient may submit eligible costs to the Grantee for administrative, pre-construction and planning activities prior to this agreement for reimbursement.

### **General Administration of Subaward**

Subrecipient will have general administrative cost to support activities listed in the Scope of Services. These costs are all in direct support of the production of and delivery of rental units and community space on the 1<sup>st</sup> floor of the Riverview building. The Subrecipient will be reimbursed for administrative activities from the date of this agreement through the term of the Agreement, which may include limited pre-award costs. The Subrecipient will be responsible for any administrative activities in excess of this Agreement.

Administrative activities may include:

1. Project Fiscal Management to include the submission of invoices and closeout reports;
2. Project monthly reporting to include CDBG-DR personnel timesheets with detailed allocation of time and documentation of paid payroll;
3. Copies of all receipts with cleared checks and/or bank statements to support expenses from approved project budget; and

4. The Grantee will ensure by the use of written agreements and contracts that, to the maximum extent practicable, the apartment units rehabilitated with CDBG-DR funds will remain affordable to individuals or families whose incomes do not exceed 80% of area median income during the compliance of the NSP agreement.

## **B. National Objectives**

The parties agree that the activities carried out under this Agreement meet the following CDBG-DR national objective: to benefit low- and moderate- income persons.

## **C. Levels of Accomplishment – Performance Goals and Timelines (Benchmark Timelines)**

The major goal of the Subrecipient's efforts under this Agreement will be to restore affordable rental housing to the Clendenin Community.

This Agreement will serve as the acquisition subrecipient agreement to prioritize the acquisition of the Riverview building in order to begin rehabilitation of the 3<sup>rd</sup> floor units.

### **Estimated Timelines for accomplishments include:**

Acquisition/transfer of ownership: First Quarter 2022

Bid Request for Professional services: First Quarter 2022

Draft design and construction documents from professional service (Architect/Engineer) A/E

Complete Rehab Scope for 3<sup>rd</sup> floor and floodplain management/up to code criteria: First Quarter 2022

Request for Proposal for rehabilitation construction documents: First Quarter 2022

Publish Request for Proposals for rehabilitation (minimum 45 days): Second Quarter 2022

Award Construction Contract for Rehab: Second Quarter 2022

Construction: Construction Deadline December 2023 (priority to support 3<sup>rd</sup> floor units)

Lease Up: January – June 2024

Final Project Monitoring: January to June 2024

Project Closeout: June 2024

Third Floor Renovations: critical items to bring building in compliance with previous federal funding from the Neighborhood Stabilization Program;

First Floor Renovations: prioritizing flood plain management, critical items and mechanics elevated, etc.

#### **D. Staffing**

Subrecipient shall ensure adequate and appropriate staffing are allocated to each activity identified in Section (C) above. Subrecipient agrees to provide documentation that Key Personnel are qualified in their tasks delivering services under the *Restore Riverview Building Onsite* Project. Subrecipient will also designate a Project Manager as Key Personnel to ensure quality of services and manage the project. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance. Any changes in the Key Personnel assigned or their general responsibilities under this Agreement are subject to the prior approval of the Grantee. The Subrecipient shall supervise and direct the completion of all activities under this agreement. Any changes are subject to the prior approval of Grantee.

#### **E. Grantee Performance**

Grantee will provide oversight to the federal project and arrange technical assistance if needed for compliance. Grantee will also provide internal monitoring for quality assurance and control.

### **IV. PERFORMANCE MONITORING & REPORTING**

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

#### **A. Monitoring**

The Grantee shall monitor the performance of the Subrecipient as necessary and in accordance with regulations on Subrecipient Monitoring and Management, 2 CFR 200.330 – 2 CFR 200.332, to ensure Subrecipient compliance with all of the requirements of this Agreement, including the timeframes and performance goals associated with the activities. Substandard performance as determined by the Grantee will constitute noncompliance with this agreement. If action to correct such substandard performance is not taken by the Subrecipient within 30 days after being notified by the Grantee, the Grantee may impose additional conditions on the Subrecipient and its use of CDBG-DR 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.

#### **B. Reporting**

The Subrecipient shall submit regular monthly progress reports and financial records to the Grantee. The Subrecipient will be required to submit a monthly progress narrative to describe



the purpose and progress of CDBG-DR funds expended. Monthly timesheets of CDBG-DR personnel will also be required along with all paid receipts and cleared checks for financial records and all reimbursements.

## **V. PERIOD OF PERFORMANCE AND TERM**

The period of performance for the Subrecipient, meaning the time during which the Subrecipient may incur new obligations to carry out activities under this Agreement, shall begin on July 1<sup>st</sup> 2021 and end on the 30<sup>th</sup> day of June 2024. Notwithstanding the forgoing, the Subrecipient shall also be entitled to reimbursement for administrative and planning activities completed beginning the date of this Agreement through the final deadline date. Any pre-award expenses must be approved by the program and an eligible expense.

The Subrecipient will provide a final performance and expenditure report in the format provided by the Grantee, to the Grantee within 60 days following the project completion.

This Agreement and its terms and conditions shall remain in effect during any period that the Subrecipient has control over Grant Funds provided through this Agreement.

## **VI. BUDGET**

The Subrecipient shall complete all activities in this Agreement in accordance with the provided approved Budget Table (budget table after this paragraph). Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient. CDBG-DR funds shall be used solely for the stated purposes set forth in this Agreement. Project costs shall be paid in accordance with the budget allocations outlined below. All costs incurred must be fully documented. In addition, Grantee may require additional detail budget breakdown. Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by Grantee. **Expenditures shall be supported by contracts, invoices, vouchers and other data as appropriate, including any reports required by the Grantee, evidencing the costs incurred, along with cleared checks and/or bank statements for CDBG-DR funds.**

### **A. Budget Table**

Projected Riverview Onsite Project Budget	
Acquisition	\$480,000
Admin/Delivery Costs/Pre-Construction: 2 CRF 200 Training, Single Audit, Legal, Accounting, Office Supplies, Request for	\$183,000

Proposals, Flood Insurance, Construction Project Manager, Professional Services, Rehab Utilities, Lease up Marketing, Etc with Grantee Approval	
Rehabilitation Construction Costs and Resiliency	\$1,800,000
<b>Current Total Award:</b>	<b>\$2,463,000</b>

**B. Project Costs**

Grantee will, upon receipt of acceptable documentation from the Subrecipient, advance or reimburse actual Project Costs related to the Restore Riverview Building Onsite Project. Project costs are direct costs of undertaking a project. These include, but are not limited to, acquisition and rehabilitation costs; which may also include activity delivery costs.

**C. Activity Delivery Costs**

Grantee will, upon receipt of acceptable documentation from the Subrecipient, advance or reimburse actual reasonable Activity Delivery Costs related to the Restore Riverview Project. Costs directly related to the delivery of a project include, but are not limited to, the development of a marketing plan, rental leases, policies and procedures, request for proposals, environmental review, completing and reviewing rehabilitation cost and review write-ups, review of project plans and specifications, inspections, and preparing and reviewing project documents.

**D. Administrative Costs**

Grantee will, upon receipt of acceptable documentation from the Subrecipient, advance or reimburse actual reasonable administrative costs and charges related to the Restore Riverview Project in an amount capped at 5% of the subaward at \$123,150. Covered administrative costs include, but are not limited to, general management, oversight, and coordination of the project.

**E. Eligible Costs**

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

**F. Indirect Costs**

The Subrecipient will not charge any indirect costs to this subaward.

**G. Program Income**

The Grantee does not anticipate program income.

**VII. PAYMENT**

It is expressly agreed and understood that the total amount to be paid by the Grantee under this initial agreement shall not exceed \$2,463,000 for all activity expenses listed in the approved Budget Table.

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 Section VI. Under no circumstances shall the Subrecipient request payment for or receive payment in excess of the total maximum allowable cost per budget line item.

Future amendments will be considered for rehabilitation cost once the Subrecipient provides project proposals.

A. The Subrecipient shall submit draw requests for payment of Eligible Costs payable under this Agreement to the Grantee's CDBG-DR Project Manager and the Grantee's Riverview Project Manager, or his/her designee, for review and approval. Following review and approval of the draw requests by the Grantee's Director, or his/her designee, approved draw requests shall be submitted to the Grantee's Finance Designated Person, or his/her designee, for approval of payment. Draw requests submitted shall be approved in all cases, provided that such requests are deemed to be complete. Draw requests not approved by the Grantee's Director or Finance Designated Person, or their respective designees, shall not be paid, but returned to the Subrecipient for further processing, together with a written explanation as to why the request was denied and what steps the Subrecipient must take to have the request rendered complete and eligible for payment.

B. Upon approval of payment by the Grantee as provided for above, payment of Eligible Costs shall be provided to the Subrecipient via electronic funds transfer. Such transfer of payment shall be made by the Grantee within three business days from the Grantee's receipt of Grant Funds from HUD. Upon receipt of Grant Funds from the Grantee, Subrecipient will disburse such Grant Funds to the ultimate recipient within three business days.

C. Staff time shall be reimbursed based on actual hours spent on this Agreement, per applicable hourly rates. The following fringe benefits will also be reimbursed based on staff charges: Employer's share of FICA expenses (7.65%).

Payment will be made upon submission by the Subrecipient of a properly executed Request for Payment form, 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.

## **VIII. AMENDMENT AND TERMINATION**

### **A. Amendments**

The Grantee and/or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are approved by the Grantee's governing body, and are signed in writing by a duly authorized representative of the Grantee and the Subrecipient. Amendments will generally be required when any of the following are anticipated: i) revision to the scope or objectives of the Program, including purpose or beneficiaries; ii) need to extend the availability of Grant Funds; iii) revision that would result in the need for additional funding; and iv) expenditures on items for which applicable cost principles require prior approval (see 24 CFR 570.200h for pre-award/pre-agreement costs).

The Grantee may, in its discretion, amend this Agreement to conform with Federal, State or local governmental guidelines, policies, and available funding amounts, or for other reasons regarding compliance to the CDBG-DR grant. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

### **B. Suspension or Termination**

The Grantee may terminate this Agreement, in whole or in part, upon 30 days' notice, whenever it determines that the Subrecipient has failed to comply with any term, condition, requirement, or provision of this Agreement. Failure to comply with any terms of this Agreement, include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;

3. Failure to repair and rehabilitate the 3<sup>rd</sup> floor rental units apartments 1 through 10, and lease rental units 51% (6 of the 10 units) by May 2024. In the event the Subrecipient fails in this section, Subrecipient may request an extension in writing, which cannot exceed June 2024. Failure to lease up 51% of the units by the grant's closeout, may result in unallowable costs which will have to be recaptured prior to final grant closeout.

4. Ineffective or improper use of funds provided under this Agreement; or

5. Submission by the Subrecipient to the Grantee of any reports that are incorrect or incomplete in any material respect. Grantee will work with Subrecipient to make any corrections as needed with Quality Improvement Plans.

Notwithstanding anything hereinabove to the contrary, Grantee agrees that it shall not exercise its right to suspend or terminate this Agreement until it shall have given written notice to the Subrecipient of the alleged non-compliance and has given the Subrecipient a reasonable amount of time to correct and/or cure the alleged non-compliance. The Subrecipient shall be paid for all authorized services aligned with the approved budget that has been properly performed prior to termination.

The Grantee may apply 2 CFR 200.338 "Remedies for noncompliance" in place of suspension or termination until failure is resolved. The Grantee may also apply 2 CFR 200.339 "Termination" and should observe 2 CFR 200.342 "Effects of Suspension and Termination".

#### Termination of convenience.

1. Either Party may terminate this Agreement in whole, or in part, upon 30 days' prior written notice to the other party, if the Parties mutually determine that continuation of the Agreement obligations would not produce beneficial results commensurate with the further expenditure of funds. If the Agreement is terminated in whole or in part pursuant to this provision, the Subrecipient may not incur new obligations relating to the part or parts terminated after the effective termination date and shall cancel as many outstanding obligations relating thereto as possible.
2. The Subrecipient may terminate this Agreement upon 30 days prior written notice to the Grantee, setting forth the reasons for such termination in whole, or in part to be terminated.

In the event Grantee elects to terminate this Agreement it 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 receipt of notice by Subrecipient, the Subrecipient shall, unless the notice directs otherwise, immediately discontinue all activities hereunder, except as may otherwise be legally required pursuant to a binding commitment to perform. The Subrecipient shall cancel as many outstanding obligations as possible. Upon termination, the Grantee retains the right to recover any undeserved or improper expenditures from the Subrecipient

and the Subrecipient shall return to the Grantee any undeserved or improper expenditures no later than thirty (30) days after the date of termination. 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.

When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass through entity and the non-Federal entity remain responsible for compliance with the requirements in 2 CFR 200.343 Closeout and 2 CFR 200.344 Post-Closeout Adjustments and Continuing Responsibilities.

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

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

### **D. Obligations Governing Use of CDBG-DR Funds Survive Termination**

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

### **E. Obligations Under Program Loan Documents**

Notwithstanding anything to the contrary set forth herein, in the event of any termination of this Agreement under any of the foregoing provisions, the Grantee shall assume all responsibilities, liabilities, and obligations of the Subrecipient under any Riverview Grant documents. *(If Grantee terminates mid project either during rehab or affordability period, they have to assume the remaining lien amount for grant or pay money back because LMI benefit would end before affordability period.)*

## **F. Payment Upon Termination**

Except as in the event of termination or suspension for cause, the Subrecipient shall be entitled to payment on invoices submitted to the Grantee no later than 90 days from the date of termination contained within the notice, to the extent that requests represent eligible activities satisfactorily completed during the term of the Agreement and otherwise reimbursable under the terms of this Agreement. This includes time spent on any closeout and post closeout work performed that would not otherwise be completed by the Subrecipient, even if past the 90 days from the date of termination.

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

The CDBG-DR 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 technical assistance funding to provide 2CFR Part 200 uniform requirement training to Subrecipient in order to comply with all of the obligations described in this Agreement.

### **A. General Compliance**

The Subrecipient is responsible for and 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-DR 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; HUD Fair Housing Act, 24 CFR Part 35, 24 CFR Part 58, 24 CFR Part 135; National Historic Preservation Act of 2018, 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 environmental review process; and Action Plan amendments and HUD's guidance on funds.

Notwithstanding the foregoing, (1) the Subrecipient does not assume 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 is responsible for and shall also comply with all other applicable Federal, state and local laws, regulations, and policies that govern the use of the CDBG-DR funds in complying with its obligations under this Agreement, regardless of whether CDBG-DR funds are made available to the Subrecipient on an advance or reimbursement basis.

### **B. Duplication of Benefits**

The Subrecipient shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5155) and described in Appropriations Act. Specifically, Section 312 prohibits any person, business concern, or other entity from receiving “any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.” 42 USC 5155 (a). A duplication occurs when a beneficiary receives assistance from multiple sources of cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of need. Guidance to assist in preventing a duplication of benefits is provided in a notice published in the Federal Register at 76 FR 71060 (November 16, 2011).

### **C. 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).

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

The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR §200.326 and §200.310. Subrecipient shall be required to maintain flood insurance on the Riverview building in the maximum allowable amount under NFIP.

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

Subrecipient is responsible for and shall comply with 24 CFR 570.502 (a) and (c), 24 CFR 570.489 (d), 24 and any applicable Federal Register Notices.

The Subrecipient is responsible for and 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:

#### **1. Financial & Program Management**

The Subrecipient shall expend and account for all CDBG-DR 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.

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



## 2. Cost Principles

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

- (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.

## F. Documentation and Record Keeping

### 1. Records to be Maintained

The Subrecipient shall establish and maintain records sufficient to enable the Grantee to (1) determine whether the Subrecipient has complied with this Agreement and applicable Federal statutes and regulations related to this Agreement. These records include the records described in Section III. of this Agreement, Scope of Service.

*Notwithstanding the terms of this Agreement, all records the Subrecipient is required to maintain, including supporting documentation, shall be retained for 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 Grantee to determine whether the Subrecipient has met the requirements of this part. At a minimum, the following records are needed:

- (a) Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location (if the activity has a geographical locus), the amount

of CDBG funds budgeted, obligated and expended for the activity, and the provision in subpart C under which it is eligible.

(b) Records demonstrating that each activity undertaken meets one of the criteria set forth in §570.208.

## 2. Access to Records

As required by 2 CFR 200.331(a)(5), the Subrecipient shall permit the Grantee and [its](#) auditors to have access to the Subrecipient's records and financial statements as necessary for the Grantee to meet its audit requirements under the Federal award.

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

Prior to closeout of this agreement, the Subrecipient must transmit to the Grantee records sufficient for the Grantee to demonstrate that all costs under this Agreement met the requirements of the Federal award.

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 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;

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

#### 4. Client Data and Other Sensitive Information

The Subrecipient is required to maintain data demonstrating client eligibility for activities provided under this Agreement. Such data may include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of activities provided.

The Subrecipient must comply with 2 CFR §200.303 and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 CFR 200.82, and other information HUD or the Grantee designates as sensitive or the Subrecipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

Subrecipient shall further comply with the applicable requirements of the Records Management and Preservation of Essential Records Act, W. Va. Code §§ 5A-8-21, 22; the Consumer Credit and Protection Act, General Consumer Protection, W. Va. Code §§ 46A-6-101, *et seq.*; the Breach of Security of Consumer Information Act, W. Va. Code § 46A-2A-101-105; the West Virginia Governmental Ethics Act, W. Va. Code §§ 6B-1-1, *et seq.*; and the West Virginia Freedom of Information Act, W. Va. Code §§ 29B-1-1, *et seq.*, as applicable

#### **G. Close-out**

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

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

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

### **1. Single Audit**

The Subrecipient must be audited as required by 2 CFR part 200, subpart F when it is expected that the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements. This threshold is \$750,000.00 and at a cost to the Subrecipient after grant closeout.

### **2. Inspections and Monitoring**

The Subrecipient shall permit the Grantee and its auditors to have access to the Subrecipient's records and financial statements as necessary for the Grantee to meet the requirements of 2 CFR part 200. All CDBG-DR funds must be maintained in a sole bank account for the purpose of transparency and audits.

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

This review must include: (1) reviewing financial and performance reports required by the Grantee; (2) following-up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from the Grantee detected through audits, on-site reviews, and other means; and (3) issuing a management decision for audit findings pertaining to this Federal award provided to the Subrecipient from the Grantee as required by 2 CFR §200.521.

### **3. Corrective Actions**

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

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

## **I. Procurement and Contractor Oversight**

The Subrecipient shall comply with the procurement standards in 2 CFR §200.318 - §200.326 when procuring property and services under this Agreement.

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

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

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

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

## **J. Property Standards**

Real property acquired by the Subrecipient under this Agreement shall be subject to 24 CFR 570.489(j)" and 24 CFR 570.200(j)

The Subrecipient shall also comply with the Property Standards at 2 CFR 200.310, 2 CFR 200.312, 2 CFR 200.314 through 2 CFR 200.316. The Subrecipient shall also comply with 2 CFR

200.313 Equipment, except that when the equipment is sold, the proceeds shall be program income, and equipment not needed by the Subrecipient for activities under this Agreement shall be transferred to the Grantee for its CDBG-DR program or shall be retained after compensating the Grantee.

In the event that real property is acquired by the Subrecipient under this agreement it shall be subject to 24 CFR 570.489(j)" and 24 CFR 570.200(j). The Subrecipient will then also comply with the Property Standards at 2 CFR 200.310, 2 CFR 200.312, 2 CFR 200.314 through 2 CFR 200.316. The Subrecipient shall also comply with 2 CFR 200.313 Equipment, except that when the equipment is sold, the proceeds shall be program income, and equipment not needed by the Subrecipient for activities under this Agreement shall be transferred to the Grantee for its CDBG-DR program or shall be retained after compensating the Grantee.

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

For all projects that include construction or rehabilitation, the Subrecipient shall meet or shall cause recipients of Grant Funds to meet all applicable State and local building code requirements. In addition, the Subrecipient will follow building standards as defined in 81 FR 83269, which includes but is not limited to Green Building standards (Energy Star, LEED, ICC700, Enterprise Green Communities, EPA Indoor Airplus, etc.), elevation requirements, and broadband infrastructure.

#### **L. Flood Plain Management**

Subrecipient must follow all applicable city, county and federal floodplain guidelines.

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

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

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

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

In addition to other URA requirements, these regulations (49 CFR § 24.403(d)) implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC § 5181, which provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [URA] shall be denied such

eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act".

The Grantee has received a waiver of the NSP Affordability Period for the funds on the first floor of the Riverview building apartments. This is documented in Attachment D.

## **O. Nondiscrimination**

### **1. 24 CFR part 6**

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

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

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

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

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

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of

employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

### 3. State and Local Nondiscrimination Provisions

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

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

#### (i) General Compliance:

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

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

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

If the Federal financial assistance under this Agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the Subrecipient's assurance herein shall obligate the Subrecipient or, in the case of a



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

If the Subrecipient receives real property interests or funds or for the acquisition of real property interests under this Agreement, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part 1 shall extend to any facility located wholly or in part in such space.

## 5. Affirmative Action

### (i) 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.

### (ii) 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.

### (iii) 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.

(iv) 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.

Subrecipient 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.

## **P. Labor and Employment**

### **1. Labor Standards**

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

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

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

When the Subrecipient intends to utilize volunteer labor to conduct projects that could be subject to Davis-Bacon they will coordinate through the Grantee with HUD to verify that the project is exempt from the Davis-Bacon and HUD determined wage rates requirements based on 24 CFR Part 70 § 70.1, § 70.2, § 70.3, § 70.4, § 70.5 as authorized by Sec. 955, Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1437(j), 5310

and 12 U.S.C. 1701q(c)(3); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

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

##### **1. Compliance**

The Subrecipient shall comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u, and implementing its implementing regulations at 24 CFR part 135. Annual Section 3 Data will be submitted to the Grantee at the beginning of each fiscal year, for previous year contracts.

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).

#### **R. Conduct**

##### **1. Hatch Act**

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

##### **2. Conflict of Interest**

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

Subrecipient agrees to complete State of West Virginia Purchasing Division form Certification of Non-Conflict of Interest as per §5A-3-31 of the West Virginia Code, see Attachment C.

##### **3. Lobbying Certification**

The Subrecipient hereby certifies that:

- (i) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of

any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

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

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

## **S. 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.

## **T. Environmental Conditions**

### **1. Prohibition on Choice Limiting Activities Prior to Environmental Review**

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

## 2. Air and Water

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

- Air quality. (1) The Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)); and (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93).
- Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.*, as amended, including the requirements specified in Section 114 and Section 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder;

## 3. Flood Disaster Protection

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

## 4. 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.

**THE UNDERSIGNED**, as authorized officials on behalf of the parties, have executed this Subrecipient Agreement, which shall be effective as of the date of execution hereof on behalf of the Grantee.

**GRANTEE**

By: Jennifer Ferrell  
(signature)

Name: Jennifer Ferrell

Title: Director, Community Advancement and Development

Date: 03/25/22

**SUBRECIPIENT**

By: Kenneth E. Tawney  
(signature)

Name: Kenneth E. Tawney

Title: Chairman  
(Chief Elected Official/Executive Officer with Authority to Sign)

Date: March 24, 2022

Budget Table:

Projected Riverview Onsite Project Budget	
Acquisition, Closing Costs, etc	\$480,000
Admin/Delivery Costs/Pre-Construction: 2 CRF 200 Training, Single Audit, Legal, Accounting, Office Supplies, Request for Proposals, Flood Insurance, Construction Project Manager, Professional Services, Lease up Marketing	\$183,000
Rehabilitation Construction Costs and Resiliency	\$1,800,000
<b>Current Total Award:</b>	<b>\$2,463,000</b>

## **Attachment B:**

The Subrecipient must comply with HUD's requirements for duplication of benefits, imposed by Federal Register notice on the Grantee as follows:

(3) Duplication of benefits. A grantee has adequate procedures to prevent the duplication of benefits where the grantee identifies its uniform processes for each of the following: (a) Verifying all sources of disaster assistance received by the grantee or applicant, as applicable; (b) determining an applicant's unmet need(s) before awarding assistance; and (c) ensuring beneficiaries agree to repay the assistance if they later receive other disaster assistance for the same purpose. Grantee procedures shall provide that prior to the award of assistance, the grantee will use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and other sources of funding to prevent the duplication of benefits. Departmental guidance to assist in preventing a duplication of benefits is provided in a notice published in the Federal Register at 76 FR 71060 (November 16, 2011), in HUD Guidance on Duplication of Benefits Requirements and Provision of CDBG Disaster Recovery (DR) Assistance, as amended, (<https://www.hudexchange.info/resource/3137/cdbg-dr-duplication-of-benefit-requirements-and-provision-of-assistance-with-sba-funds/>) and in paragraph A.21 of section VI of this notice.



## Attachment C: Non-Conflict of Interest

### **NON-CONFLICT OF INTEREST FORM** **Completion Instructions**

The WV Department of Economic Development requires all evaluators of solicitations, despite the type of transaction, to sign a **Certification of Non-Conflict of Interest**. The WVDED also requires that the agency procurement officer sign this certification. By signing this certification, the evaluator(s), advisor(s) and the agency procurement officer attest that:

(1) his or her service on the evaluation committee is not in violation of **West Virginia Code** § 5A-3-31, § 6B-2-5, or any other relevant code section; (2) his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) he or she has not had or will not have contact relating to the solicitation identified herein with any participating vendors between the time of the bid opening and the award recommendation without prior approval of the WVDED. Agency procurement officers should discuss the non-conflict of interest issue with potential committee members to ensure that individuals who may have a conflict are not chosen to participate as evaluation committee members.

Please note that this requirement applies to all transaction types.

This certification must be submitted at the following time frames:

- Requests for Proposals (RFP) / Expressions of Interests (EOI): Agencies must submit this certification prior to beginning the evaluation of an RFP or EOI.
- Requests for Quotations and All Other Transaction Types: The evaluator(s) must sign the Certification of Non-Conflict of Interest and submit it, along with the recommendation for award, to the WVDED.

This certification applies to all transactions processed through the Procurement Office of WVDED. In addition, it is required for agency delegated purchases.

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STATE OF WEST VIRGINIA  
WV DEPARTMENT OF ECONOMIC DEVELOPMENT

**CERTIFICATION OF NON-CONFLICT OF INTEREST**

**West Virginia Code § 5A-3-31:** "It shall be unlawful for any person to corruptly combine, collude or conspire with one or more other persons with respect to the purchasing or supplying of commodities or printing to the state under the provisions of this article if the purpose or effect of such combination, collusion or conspiracy is either to (1) lessen competition among prospective vendors, or (2) cause the state to pay a higher price for such commodities or printing than would be or would have been paid in the absence of such combination, collusion or conspiracy, or (3) cause one prospective vendor or vendors to be preferred over one or more other prospective vendor or vendors. Any person who violates any provision of this section shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years, and be fined not exceeding five thousand dollars."

**West Virginia Code § 6B-2-5(b)(1):** "A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person."

**West Virginia Code § 6B-2-5(d)(1):** "[N]o elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control . . . ."

The individual(s) listed below have been charged to evaluate or serve as members or advisors of an evaluation committee for the solicitation as specified [ Grant Award 22\*4991 ]

By signing this form, each individual acknowledges that: (1) his or her service on the evaluation committee is not in violation of West Virginia Code § 5A-3-31, § 6B-2-5, or any other relevant code section; (2) his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) he or she has not had or will not have contact relating to the solicitation identified above with any participating vendors between the time of the bid opening and the award recommendation without prior approval of the WVDED.

Name/Title	Agency	Signature	Date
Hannah Trautwein CDBG-DR Project Manager	WV Department of Economic Development	<i>Hannah Trautwein</i>	3/25/2022
Michelle Tharp Penaloza CDBG-DR Program Manager	WV Department of Economic Development	<i>M. Tharp</i>	03/25/2022

## Attachment D: NSP Waiver



ASSISTANT SECRETARY FOR  
COMMUNITY PLANNING AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-7000

MEMORANDUM FOR: John E. Tolbert, III, Director  
Community Planning and Development, 3ED  
*David C. Woll, Jr.* 4/2/2019

FROM: David C. Woll, Jr., Acting Assistant Secretary  
for Community Planning and Development, D

SUBJECT: Neighborhood Stabilization Program  
Approval of Waiver Request, Unified NSP1 and NSP3 Notice II.B.3.  
Continued Affordability

This memorandum responds to your January 30, 2019, request for approval of a waiver for the State of West Virginia of certain Neighborhood Stabilization Program (NSP) affordability requirements for eight units in the Riverview at Clendenin Building, in Clendenin, WV. The State of West Virginia requested this waiver on November 20, 2018. The waiver would allow the State to develop non-housing uses on the ground floor of this historic schoolhouse and to complete repair of damaged HVAC and electrical systems, and restore livability to the third-floor units. All of the additional work will be accomplished with Community Development Block Grant disaster recovery (CDBG-DR) and other funds.

### **Background**

The Riverview at Clendenin (Riverview) Building is an NSP1 project funded by the State of West Virginia. The Riverview project used NSP funds, historic tax credits and developer equity to develop 18 units of senior housing on the first and third floors of an old school building. The second floor was developed as a health clinic, using other funding sources, and remains in operation. Riverview is located in the 500-year floodplain and was greatly impacted in the June 23, 2016, 1,000-year flood event. The first-floor units and building mechanicals were destroyed by water and mud that rose up to just below the second floor. The third-floor units are not habitable, due to the failure of building systems. The Pittsburgh Field Office's responses and recommendations are included below.

### **Analysis**

Consistent with the Housing and Economic Recovery Act of 2008 (HERA), which authorized NSP, the Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants, at 75 FR 64322, requires NSP grantees to ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental or redevelopment of abandoned and foreclosed NSP-assisted homes and residential properties remain affordable to individuals or families whose incomes do not exceed 120 percent of area median income. Further, the Notice, at section II.B.3.a, requires grantees to adopt, at a minimum, the HOME program standards in 24 CFR 92 to comply with the continued affordability requirement.

[www.hud.gov](http://www.hud.gov)

[espanol.hud.gov](http://espanol.hud.gov)

The Riverview Building was completed in 2012 and remained fully occupied with income-eligible occupants until June 23, 2016. The State has proposed a plan to relocate the eight units to another location, outside of the floodplain, and to repair damage to the property using CDBG-DR funding. The State cites the increase in large scale flooding events, the cost of flood mitigation, and the potential destabilizing effect of mitigation efforts to the structure to argue that it is infeasible to return housing units to the first floor. To carry out its proposed plan, the State is requesting a waiver of the requirement to adopt, at a minimum, the HOME program affordability requirements for the first-floor units. The State believes it met the statutory requirement for continued affordability by maintaining affordability to the maximum extent practicable and for the longest feasible term.

The field office recommends that HUD find that the first-floor units remained affordable for the maximum practicable and feasible term; it recommends a waiver of the requirement to adopt the HOME program standards for the eight units. The building remains subject to NSP requirements and any future redevelopment with CDBG-DR funds must also meet CDBG-DR requirements.

### **Discussion**

The field office has stayed closely involved in resolution of this issue. The field office staff consulted Headquarters over a year ago to explore ways to satisfy the requirements in the most appropriate manner, and Headquarters has provided direction on this issue. The State did not err in locating these units in this location; the flood was a 1,000-year event. It would be irresponsible to require that residential units be replaced. However, without a waiver, the ground floor would have no use except residential.

The State is solving this dilemma by proposing that CDBG-DR funds be expended to repair the building for residential use on the third floor and non-residential on the ground floor. The State has also committed CDBG-DR funds to develop eight units outside the 1,000-year floodplain. In this manner, the Riverview project can return to full occupancy while the eight units that cannot be used as housing will be replaced elsewhere in the community.

### **Decision**

Based on the explanation provided by the State of West Virginia, HUD has determined that the State has met the statutory continued affordability requirement of HERA. I hereby find that there is good cause to approve the request for a waiver of section II.B.3.a of the NSP Notice to the extent it requires that NSP grantees must adopt the HOME program standards to comply with the statutory continued affordability requirements. This waiver will allow the State, using CDBG-DR funds, to redevelop the ground floor for commercial or other non-residential uses. The State will also repair the utilities so that the third floor can once again serve as affordable housing and will develop eight new affordable housing units at a different site.

Please advise the State that all other NSP requirements continue to apply. As you know, HUD's Office of Energy and Environment is working with the State to ensure that environmental review requirements have been met for the subsequent construction. Should you have any questions, please contact Steve Johnson, Director of the Entitlement Communities Division at (202) 402-4548.