



**COMMUNITY
DEVELOPMENT**
CITY OF COLUMBIA

MEMORANDUM OF AGREEMENT BETWEEN

City of Columbia Community Development Department,

Columbia Water

For

**Implementing the Canal Head Gates and Lock Gate Repair Program Under the
Community Development Block Grant – Mitigation Program**

This document constitutes an agreement between the City of Columbia Community Development Department (CDD), and Columbia Water (CW). CDD and CW will collectively be referred to as the “Parties” or individually as a “Party” throughout this Memorandum of Agreement.

The CDD has been designated as the Grantee (“Grantee”) to administer the City of Columbia’s Community Development Block Grant – Mitigation funds, which are subject to the federal statutes and regulations governing CDBG-MIT grants, as modified by exceptions and waivers previously granted and which may hereinafter be granted by the U.S. Department of Housing and Urban Development (“HUD”). The Community Development Department through this Memorandum of Agreement is designating to Columbia Water, based on its roles and expertise, responsibilities contained within related to the CDBG-MIT Head Gates Project.

PREAMBLES

WHEREAS, the City of Columbia has applied for and received funds, Catalog of Federal Domestic Assistance Number 14.218 (CDBG MIT), from the Further Additional Supplemental Appropriation for Disaster Relief Act 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018), Public Law 115-123;

WHEREAS, the City of Columbia submitted to HUD, and HUD on June 29, 2020, approved a “Community Development Block Grant Mitigation Action Plan (“Action Plan”), detailing a range of programs to address the City of Columbia’s unmet mitigation needs, which resulted in \$18,585,000 in CDBG-MIT funding allocated to the city;

WHEREAS, Grantee has been designated to administer the City’s allocation of CDBG-MIT funding subject to Federal statutes and regulations governing CDBG-MIT grants, and as modified by any exceptions and waivers granted by HUD.

WHEREAS, Grantee has designated Columbia Water project manager for the CDBG-MIT Head Gates Project, pursuant to 24 CFR 570.501 because Columbia Water has developed expertise in implementing similar programs;

WHEREAS the Columbia Water agrees to perform the duties and to assume the responsibilities, with the regulatory compliance support and guidance of CDD for construction management in the CDBG-MIT Head Gates Project set forth in the City’s Action Plan and amendments thereto and applicable laws and regulations;

WHEREAS other City of Columbia departments including, but not limited to Community Development, Procurement and Contracts, and Finance will all be responsible to assist the Columbia Water in the implementation of the Head Gates Project within their respective roles;

WHEREAS the public purpose to be derived from this Agreement is the collaboration between parties with different preexisting staffing, skill sets and knowledge for a more expeditious and effective implementation of mitigation measures to address the City's unmet mitigation needs.

WHEREAS the Parties wish to set forth their mutual understanding regarding their respective roles and responsibilities in implementing the activities set for in the Action Plan and any ensuing Action Plan amendments.

NOTWITHSTANDING any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review by CDD and if required, a receipt by the City of Columbia of an Authorization to Use Grant Funds from the U.S. Department of Housing and Urban Development under 24 CFR Part §58. The parties further agree that the provision of any funds to the project is conditioned on the City of Columbia's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review and that no ground-breaking or site disturbances (construction activities) may begin until approved in writing by CDD.

NOW, THEREFORE, in consideration of the promises set forth herein and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

I. GENERAL DEFINITIONS

Unless specifically provided otherwise or the context requires otherwise, when used in this Agreement:

"100-year flood plain" means the geographical area defined by the Federal Emergency Management Agency (FEMA) as having a one (1) percent chance of being inundated by a flooding event in any given year.

"500-year flood plain" means the geographical area defined by FEMA as having a 0.2 percent chance of being inundated by a flooding event in any given year.

"Act" means the Further Additional Supplemental Appropriation for Disaster Relief Act 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018), Public Law 115-123.

"Activity Delivery Costs" means the actual implementation and delivery costs, including staff and overhead costs, directly related to carrying out activities under 24 CFR Part 570.201 through Part 570.204.

"Action Plan" means the City of Columbia's CDBG-MIT Action Plan and any subsequent Action Plan amendments thereto, formally submitted to and approved by the U.S. Department of Housing and Urban Development pursuant to the Further Additional Supplemental Appropriation for Disaster Relief Act 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018), Public Law 115-123.

"Allowable Costs" (also referred to as "Eligible Costs" or "Eligible Expenses") means costs that are acceptable under 2 CFR Part 200 Subpart E – Cost Principles.

"CDBG-MIT" means grant funded provided by the U.S. Department of Housing and Urban Development pursuant to the Further Additional Supplemental Appropriation for Disaster Relief Act 2018 (Division B, Subdivision 1 of the

Bipartisan Budget Act of 2018), Public Law 115-123; and governed by Title I of the Housing and Community Development Act of 1974, as amended, and those regulations set forth in 24 CFR Part 570, Subpart D as may be amended from time to time and all other applicable Federal and State regulations and laws and assurances signed by the Office of Community Development.

“Contractor” means a contractor paid with CDBG-MIT funds in return for a specific service. A contractor is a third-party firm the Grantee or Subgrantee contracts with through a formal procurement process to perform specific functions. Columbia Water is not a contractor.

“Covered Persons” means any person who is an employee, agent, consultant, officer, or elected official or appointed official of the City or of any designated public agencies, or subrecipients which are receiving CDBG-MIT funds.

“Draw Down” means the process of requesting and receiving CDBG-MIT funds.

“Direct Program Costs” means costs associated with the acquisition, materials, equipment and construction costs, warranty and other costs related to completion of the mitigation projects.

“Duplication of Benefits” means financial assistance under any other program or from insurance or any other source for any part of the project for which assistance is being provided with CDBG-MIT funds for programmatic activities.

“Eligible Activity” means any project, program, or portion thereof that receives financial assistance under this Agreement consistent with the City’s Action Plan, Action Plan Amendments and Federal Register notices applicable to CDBG-MIT allocations and otherwise compliant with applicable Federal laws and regulations and therefore is eligible to receive CDBG-MIT funds.

“Eligible Costs” means cost for the activities specified in this Agreement for which grant funds are budgeted, provided that such costs (i) are incurred in connection with activities eligible under the Further Additional Supplemental Appropriation for Disaster Relief Act 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018), Public Law 115-123, and Title I of the Housing and Community Development Act of 1974 and all applicable regulations and requirements, and (ii) conform with the requirements of 24 CFR Part 200, Subpart E – Cost Principles, as may be amended from time to time.

“Environmental Review Procedures” means the conditions imposed by law, particularly 24 CDF Part 58, and the provisions of the Agreement which prohibit or limit the commitment and use of grant funds until certain environmental review procedural requirements have been completed.

“Environmental Requirements” means the requirements described in 24 CFR Part 58.

“Environmental Studies” means all Eligible Activities necessary to produce an “environmental document” as that term is defined in 40 CFR 1508.10, or to comply with the requirements of 24 CFR Part 58.

“HUD” means the U.S. Department of Housing and Urban Development.

“Low- and Moderate-Income Area” (“LMA”) means an area where at least 51% of households have incomes at or below 80% of the area median income (AMI), and the area can be characterized as being predominantly residential in nature.

“National Objectives” means the following policy objectives of Title I of the Housing and Community Development Act of 1974 (the HCD Act), of which at least one (1) must be approved by HUD for applications that therein complied with in using CDBG-MIT funds to carry out the Head Gates Project: (a) urgent need, activities funded with the CDBG–

MIT grant result in measurable and verifiable reductions in the risk of loss of life and property from future disasters and yield community development benefits; (b) benefit to low-and-moderate income persons, either directly or to a geographical area with a population concentration of low-and moderate income persons that HUD determines would satisfy the aims of the HCD Act.

“Program” means the activities described in this Agreement (and those developed thereafter) that are to be carried out to meet the objectives of the Head Gates Project and related requirements pursuant to the City’s CDBG-MIT Action Plan and applicable laws and regulations.

“Subrecipient” means a public or private nonprofit organization/agency receiving CDBG-MIT funds. As CDD and the Columbia Water are divisions within the same legal entity, because of 570.501(a) provides that “local governments are subject to the same requirements as subrecipients and that inter-departmental agreements should include the same provisions as required in a subrecipient agreement. In addition, all employees responsible for CDBG-MIT activities, that is, other departments within the unit of local government carrying out activities, are subject to the same regulations as the Grantee for the particular activities undertaken.” SSD/ENG shall be construed as a Subrecipient for the purposes of this Agreement, but CDD will have grant administration responsibility for ensuring that applicable regulations are followed.

II. SCOPE OF AGREEMENT

A. Grant Award

Subject to the terms and conditions of this Agreement, the Grantee, as administrator of the CDBG-MIT funds allocated to the City, shall make available to Columbia Water mitigation funds in the amount of at least **Eight Million Dollars and no/100 (\$8,000,000)** for the purpose of funding activities under the CDBG-MIT Action Plan related to implementing and administering the Head Gates Project (“the Project”). Grant funds must be expended by **December 31, 2026**, unless further extended by amendment as requested by Columbia Water and coordinated and approved by CDD. Procurement and Contracts (P&C) Department is required to ensure that all contracts related to performance of the Head Gates Project clearly stipulate the period of performance or the date of completion and all contracting requirement referenced in 2.CFR 200 Appendix II. CDD as the grant administrator will coordinate with P&C to review and amend their standard contract templates prior to procurement and execution to confirm necessary funding and federal requirements are addressed.

B. Goals and Objectives

The activities funded by this Agreement shall assist in meeting the National Objectives of the CDBG-MIT program and the execution of the program, which has as its purpose to support data-informed investments in high-impact projects that will reduce risks attributable to natural disasters, with particular focus on repetitive loss of property and critical infrastructure.

C. The Project

1. Statement of Work

The various elements of the project are as follows with responsible parties with carrying out various milestones/deliverables:

Milestone/Responsible Party	Anticipated/Completion Date
Design and engineering work / Columbia Water	Anticipated Q2 2023
Environmental review / S&ME	Anticipated Q3 2023
Published FONSI and RROF / (Published notice of no significant environmental impact and request from HUD to release funds)	Anticipated Q3 2023
Authorization to Use Grant Funds / HUD	Anticipated Q3 2023
Procurement of construction contractor / Columbia Procurement & Contracts	Anticipated Q1 2024
Construction start / Columbia Water	Anticipated Q2 2024
Construction completion and final inspection / Columbia Water	Anticipated Q3 2026
Provide Closing Documents / Contractor	Anticipated Q4 2026

2. The Budget

Columbia Water shall use the Grant Funds for the Eligible Costs associated with implementing the Project in accordance with the budget and provisions set forth below.

a. Budget Amount

A Budget Item	B Calculation	C CDBG-MIT Request	D Other Funding Source	E Project Total
CONTRACTUAL SERVICES				
Contract service description	Amount and description of how arrived at total for each line item	\$	\$	
Head Gate construction	Independent cost estimate provided by engineering firm	\$ 7,813,000.00	\$ 787,000.00	\$ 8,600,000.00
CONTRACT SERVICES TOTAL		\$ 7,813,000.00	\$ 787,000.00	\$ 8,600,000.00
ACTIVITY DELIVERY COSTS				
Activity delivery description	Amount and description of how arrived at total for each line item			
ICF/Stantec - project support and invoice review	projection based on contract value	\$ 60,000.00		
Davis Bacon/Section 3 compliance	projection based on contract value	\$ 33,100.00		
OCD staff costs (T. Jones)	projection (5 year grant period)	\$ 84,000.00		
Environmental review	Actual cost	\$ 9,900.00		\$ -
ACTIVITY DELIVERY TOTAL		\$ 187,000.00	\$ -	\$ 187,000.00
TOTAL EXPENSES		\$ 8,000,000.00		\$ 8,787,000.00

b. Activity Delivery Costs

Grantee will, upon receipt of the construction pay application from Columbia Water, reimburse actual reasonable Activity Delivery Costs related to the program. Activity Delivery costs to deliver the direct benefit includes the management, procurement, and technical work for:

- Environmental review
- Construction of Head Gates
- Other: _____ (specify)

c. Direct Program Costs

Grantee will, upon receipt of acceptable documentation (i.e., approved draw request, certified payroll, other documentation required by Columbia Water including inspection reports), reimburse actual Direct Program Costs including the labor and materials related to the purchase of material/equipment, and the construction/installation of the Head Gates.

3. Performance Requirements

Based on the HUD-approved Action Plan, Columbia Water will submit for payment of eligible pre-agreement costs and intends to officially launch the Program upon full execution of this Agreement.

CDD agrees to provide intermediate benchmarks as required to be reported by Grantee to HUD at the conclusion of each quarter until the project is complete. CDD will inform Columbia Water as to which data are required for quarterly reporting prior to project initiation. Columbia Water will revise quarterly expenditure and metric projections as necessary as the project progresses. Funds not expended by the deadline of this Agreement, or as extended by the Grantee, are subject to recapture and reallocation to other eligible program areas and/or Subrecipients.

4. Eligible Costs

Columbia Water shall receive and use Grant Funds for Eligible Costs as defined in Section I. Eligible Costs for Grant Funds under this Agreement include those applied to Eligible Activities that are mitigation related.

Community Development, shall also, as part of the project feasibility analysis, to prevent any duplication of benefits as defined by Section 312 of the Stafford Act by calculating the amount of unmet mitigation need for the project and identifying that the total sources of project funding do not exceed the amount of unmet need. CDD agrees that any project funding received for duplicative purpose after executing this Agreement will be repaid to HUD.

5. Assurances

Columbia Water will be responsible for implementing the Project activities in compliance with all applicable local, State and Federal laws and regulations. It shall be Columbia Water's responsibility to require that all contractors and all tiers of their subcontractors adhere to all applicable local, State, and Federal laws and regulations. As to laws and regulations applicable to the use of CDBG-MIT funds, Procurement and Contracts Department (P&CD) agrees to comply with all of the following requirements of this Agreement to the extent they are applicable and to consult with CDD for guidance if necessary to determine the applicability of any requirement listed below. As to any other laws and requirements that may specifically apply to construction projects, Columbia Water is responsible for determining the applicable laws and regulations and ensuring compliance therewith.

a. Civil Rights

i. Compliance

P&CD agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order

11063, and with Executive Order 11246 as amended by Executive Order 11375 and 12086.

ii. Nondiscrimination

P&CD will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, nation origin, sex, disability, age, marital/familial status, or status with regard to public assistance. The P&CD will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. P&CD agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

iii. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 and 24 CFR 570.601 and 602. In regard to sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the City of Columbia shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, and providing that the Grantee and the United States are beneficiaries of the deed or lease entitled to enforce such covenants. The Columbia Water, in undertaking its obligation to carry out the activity assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not it so discriminate.

iv. Section 504

P&CD agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1974, which prohibits discrimination against persons living with disabilities in any federally assisted program. The Grantee shall provide the P&CD with any guidelines necessary for compliance with that portion of the regulations in force during the term of this contract.

b. **Affirmative Action**

i. Plan

The City of Columbia agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965.

ii. Women and Minority Owned Business Enterprises (WBE /MBE)

The City of Columbia will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and Native Americans. The Columbia Water may rely on written representation by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

iii. Access to Records

The Columbia Water shall furnish and cause each of its own Columbia Waters or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

iv. EEO/AA Statement

P&CD will, in all solicitations or advertisements for employees placed by or on behalf of the City of Columbia; state that it is an Equal Opportunity or Affirmative Action employer.

v. Subcontracting Provisions

P&CD will include the provisions of Subsection a, Civil Rights, and b, Affirmative Action, in every subcontract or purchase orders, specifically or by reference, so that such provisions will be binding upon each of its subcontracts.

c. **Employment Restrictions**

i. Prohibited Activity

The City of Columbia is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian, or religious activities; lobbying, political patronage, and nepotism activities.

ii. Labor Standards

Columbia Water and CDD agree to comply with the requirements of the Secretary of Labor in accordance with Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act and all other applicable Federal, state, and local laws and regulations pertaining to labor standards as far as those acts apply to the performance of this contract. P&CD and Columbia Water shall require that all applicable contractors maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The City of Columbia agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provide, that if wage rates higher than those required under the regulations are imposed by state or local laws, nothing hereunder is intended to relieve the City of Columbia of its obligation, if any, to require payment of the higher wage. P&CD will cause or require to be inserted in full, in all contracts subject to such regulations, provisions meeting the requirements of this paragraph.

Wage determinations are to be included in all applicable procurements.

The City of Columbia will contract with an outside vendor to assist Columbia Water, CDD and other City departments with Labor Standards and Section 3 compliance as needed. The responsibilities of this vendor will include review and approval of certified payrolls, and documentation and tracking of Section 3 (24 CFR Part 75) compliance.

iii. "Section 3" Clause

P&CD shall ensure that all construction projects that exceed a threshold of \$200,000.00 in HUD community development financial assistance include the following clause:

The work to be performed under this contract is subject to the requirements of 24 CFR Part 75. This part establishes the requirements to be followed to ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

- a. *Section 3 projects.* (i) Section 3 projects means housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z-1 or 1701z-2), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 *et seq.*), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*). The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.
- b. The requirements in this part apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.
- c. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 75, 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 75 regulations.
- d. The General Contractor/Subcontractor agrees to identify all those individuals that will be working on the construction jobs by name, address, job title and wage rate. Thereafter, weekly payroll records will be submitted for those working on all sites. Upon adding any new worker to the payroll, the above information must be submitted.
- e. The General Contractor agrees to send to each labor organization or representative of workers with which the General Contractor/Subcontractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the General 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.

- f. Noncompliance with HUD's regulations in 24 C.F.R. part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- g. The General Contractor is required to track total labor hours for any covered project, as well as labor hours for Section 3 and Targeted Section 3 Workers. If HUD imposed benchmarks are not met, the General Contractor will be required to undertake additional good faith efforts to meet the benchmarks.
- h. A vendor, hired by the City of Columbia (referenced in c. ii.) will be responsible for ensuring contractor compliance with Labor Standards and Section 3.

d. Conduct

i. Lobbying

The City of Columbia hereby certifies that:

- a. 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 a 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 any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all Sub-contractors shall certify and disclose accordingly; and
- d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is required by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

ii. Copyright

If this contract results in any copyrightable materials or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

iii. Religious Organization

The City of Columbia agrees that funds provided under this contract will not be utilized for religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.200.

6. Cooperation with HUD and the Grantee

The Grantee's obligations under this Agreement are subject to compliance with applicable statutes and regulations of the CDBG-MIT program, as modified by exceptions and waivers previously granted and which may hereafter be granted by HUD. Columbia Water agrees that in connection with its rights and obligations under this Agreement, it shall cooperate with HUD and the Grantee regarding the administration and audit of the Program, including compliance with various operating and reporting procedures, which may hereinafter be promulgated by the Grantee and HUD.

7. National Objectives

CDD shall ensure that all direct program costs and activity delivery costs related to the project will achieve a CDBG-MIT National Objective, including, but not limited to documenting the amount of Grant Funds that benefits Low- and Moderate-Income households directly or that otherwise benefit a prescribed area where at least fifty-one (51) percent of the residents are low- and moderate income persons or some other area percentage of low and moderate income persons that HUD establishes as satisfying that particular National Objective. A national objective is achieved with project completion. If the project cannot be completed, any CDBG-MIT funds expended must be repaid to HUD.

D. Contract Monitoring/Performance Measures

The contract monitor for the Grantee on this Agreement is the Director of the CDD or her designee. The performance measures for this Agreement shall include the successful performance and completion of all project obligations as provided in this Agreement and any attachments. CDD will provide additional guidance on specific reporting requirements necessary.

CDD must ensure contractors, and/or other third parties receiving payment of Grant Funds have in place adequate controls and procurement processes and have established procedures to prevent any duplication of benefits as defined by Section 312 of the Stafford Act.

Grantee shall make review and audits, including onsite reviews with Columbia Water and provision of technical guidance as may be needed to meet HUD grant conditions and regulatory requirements. In the event of noncompliance, Grantee shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences or prevent a recurrence.

E. Conflict of Interest

Except for approved personnel costs, none of City of Columbia's agents, members, officers, employees, consultants or members of its governing body or anyone who is in a position to participate in a decision-making process or gain inside information with regard to the Project, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the Project or in any activity, or benefit here from, which is part of this Agreement at any time during or after such person's tenure unless all procedures for an exception have been documented and submitted in writing to the Grantee and the Grantee has approved such exception.

The procedures for requesting and documenting an exception from the Conflict-of-Interest provisions shall include the applicable procedures delineated in 24 CFR 570.489 (h)(4) and 2 CFR 200.318. This Conflict-of-Interest provision shall be in addition to the requirements in 24 CFR 570.611, and 570.489(h).

The City of Columbia and all its departments and agencies agree to provide by the provisions of 24 CFR 570.6111 which includes (but is not limited to the following)

1. The City shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts supported by Federal funds.
2. No employee, officer, or agent of the City of Columbia shall participate in the selection award, or administration of a contract supported by Federal funds if a conflict of interest, real or apparent would be involved.
3. No Covered Persons who exercise or have exercised any functions or responsibilities with respect to CDBG-MIT assisted activities 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 financial interest in any contract, , or have a financial interest in any contract, subcontract, or agreement with respect to the assisted activity, or with response to the proceeds from the assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure, or for a period of one (1) year thereafter. For the purposes of this paragraph a "Covered Person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City of Columbia.
4. City of Columbia will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

III. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this contract shall not exceed \$8,000,000.00. Drawdowns for the payment of eligible expenses shall be made against the line-item budget specified in Section II. D.2.a. herein and in accordance with performance. The Columbia Water will be reimbursed, on no more than a monthly basis, upon providing pay applications of eligible expenses. CDD will provide technical guidance on manner of format/documentation for payment submission.

The Grantee will pay to Columbia Water funds available under this contract based upon information submitted by the Columbia Water and consistent with an approved budget and Grantee policy concerning payments. Payments will be made for eligible expenses actually paid by the Columbia Water (reimbursement). Payments will be adjusted by the Grantee in accordance with any program income balances available in Columbia Water accounts (if applicable). In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Columbia Water.

The Grantee shall be responsible for submitting draw down requests to HUD to reimburse the City for expenditures made on behalf of the program.

CDD will maintain full documentation of Activity Delivery and Direct Program costs, as defined in Section I of this Agreement, for all expenses incurred.

In the event that the Columbia Water intends to seek reimbursement for staff time expended to implement and oversee the project or program, each employee must keep timesheets documenting the date and number of hours spent on the project. These timesheets must be signed by both the employee and his/her supervisor and provided to CDD along with other required documentation at the time

reimbursement is requested.

IV. TERM OF AGREEMENT, IMPLEMENTATION SCHEDULE, TERMINATION OR SUSPENSION OF AGREEMENT

A. Term of Agreement

The services of Columbia Water shall start on _____ and end on _____. The term of this Agreement and the provisions herein may be extended during the term of the Agreement, upon request to the Grantee to cover any additional time period to carry out activities. During the term of this Agreement and any extensions, Columbia Water will remain in control of the CDBG-MIT funds or other assets.

B. Implementation Schedule

Milestone/Deliverable	Anticipated/Completion Date
Design and engineering work	Anticipated Q2 2023
Complete Environmental Review	Anticipated Q3 2023
Prepare and advertise procurement	Anticipated Q1 2024
Receive AUGF	Anticipated Q3 2023
Bid Closing/Contractor Selection	Anticipated Q1 2024
Council Approval	Anticipated Q2 2024
Award Contract/Issue Notice to Proceed	Anticipated Q2 2024
Construction completion	Anticipated Q3 2026
Final Inspection	Anticipated Q3 2026
Review and Issue Payments for Final Invoices	Anticipated Q4 2026
Provide Close out Documents	Anticipated Q4 2026

C. Termination/Suspension for Cause

The Grantee may suspend or terminate this Agreement, in whole or in part without notice, if Columbia Water materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein and all payments shall cease; and the Grantee may declare Columbia Water ineligible for any further participation in the Grantee's contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe Columbia Water is in noncompliance with any applicable rules or regulations, the Grantee may withhold up to fifteen (15) percent of said contract funds due to be paid for past work as liquidated damages, until such time as the Columbia Water is found to be in compliance by the Grantee or is otherwise adjudicated to be in compliance. Reasons for suspension or termination shall include, but not be limited to the following:

1. Failure to comply with guidance provided by CDD regarding any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may be applicable to this Agreement.:
2. Failure, for any reason, by Columbia Water to fulfill in a timely and proper manner the material obligations under this Agreement.
3. Ineffective or improper use of Grant Funds as provided for under this Agreement.

D. Termination for Convenience

Either party may terminate this contract at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. Partial termination of the Statement of Services in Paragraph I.D.1. above may only be

undertaken with the prior approval of the Grantee. In the event of any termination for convenience and at any time, at the Grantee's option, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports, or other materials prepared by Columbia Water under this Agreement shall, at the option of the Grantee, become the property of the Grantee, and Columbia Water shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to termination.

E. Termination Due to Unavailable Funding

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

F. Obligations Governing Use of CDBG-MIT Funds Survive Termination

Termination of this Agreement under any of the foregoing provisions shall not alter or diminish Columbia Water's obligations governing the use of CDBG-MIT funds under applicable statutes and regulations or under this Agreement and/or shall not terminate any of Columbia Water's obligations that survive the termination of this Agreement. Such obligations and/or duties may include but are not limited to the following (1) the duty to maintain and provide access to records.

G. Payment Upon Termination

Except in the event of termination or suspension for cause, Columbia Water shall be entitled to payment on invoices submitted to the Grantee no later than ninety (90) days from the date of termination contained within the notice, to the extent that payment requests are for Eligible Activities satisfactorily completed during the term of the Agreement and otherwise reimbursable under the terms of the Agreement.

V. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

Community Development and Finance, agree to comply with 2 CFR Part 200 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all cost incurred as tracked by SSD/ENGR.

2. Cost Principles

Since the Grantee is a governmental agency, the applicable sections of 2 CFR Part 200 Subpart E - will apply. Questions or implementation concerns for implementation of 2 CFR Part 200- Subpart E will be provided by CCD, Finance and Procurement and Contracts as needed.

B. Documentation and Record-Keeping

1. Records to be maintained.

The Community Development shall maintain all records required by the Federal regulations specified in 24 CFR Part 570.506 that are pertinent to the activities to be funded under this Agreement with the support of Columbia Water. Such records shall include but not limited to:

- a. Records providing a full description of each activity undertaken.
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG-MIT programs.
- c. Records required determining the eligibility of activities.
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG-MIT assistance, including all construction invoices and payments.
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG-MIT program.
- f. Financial records as required by 24 CFR Part 570.502, and 2 CFR 200.302 and 2 CFR 200.327.
- g. Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. Record Retention

The Columbia Water shall turn over to Community Development at the completion of the project, all records pertinent to expenditures incurred under this contract. Grantee is required to maintain these records for a period of five (5) years after the termination of all activities funded under this Agreement. Records for real property acquired with funds under this contract shall be retained for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after he/she has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

a. Property Records

The CDD shall maintain real property inventory records with clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR Parts 570.503(b) (8), as applicable.

b. Close-Outs

Columbia Water's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall 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 turnover of all project records to Community Development.

The terms of this Agreement shall remain in effect during any period that Columbia Water is exercising any supervision or control over the CDBG-MIT funds

c. Audits & Inspections

All Columbia Water records with respect to any matters covered by this Agreement shall be made available to the Grantee, their designees, or the Federal Government, at any time during normal business hours, as often as the Grantee deems necessary, to audit, examine, and make

excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Columbia Water within 30 days after receipt by the Columbia Water. Failure of the Columbia Water to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments.

3. Access to Records

With respect to those records referenced in subsection 1 above, Community Development shall comply with the retention and access requirements set forth in 24 CFR 570.506. Grantee, the City Auditor, HUD, the Auditor General of the United States, and any of their duly authorized representatives or agents, shall have access to any books, documents, papers, and records of the project that are directly pertinent to this Agreement for the purpose of audits, examinations and making excerpts and transcriptions.

The City shall provide citizens with reasonable access to records, regarding the past use of CDBG funds, consistent with applicable Federal, State, and local laws regarding transparency, privacy, and obligations of confidentiality.

All records, reports, documents, or other material of data, including electronic data, related to this Agreement and/or obtained or prepared by Columbia Water, and all repositories and databases compiled or used, regardless of the source of information included therein, in connection with performance of the services contracted for herein shall become the property of the grantee, unless mutually agreed to by the Parties and provided that the City has ownership rights in the foregoing and same is not subject to third party rights pursuant to a legally binding agreement.

C. Reporting

1. Progress Report

Columbia Water shall submit quarterly Progress Reports to the Grantee no later than October 15th, January 15th, April 15th, and July 15th.

D. Procurement

1. OMB Standards

The P&CD shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.318-326, and Property Management Standards as modified by 24 CFR 570.502(b)(6), covering utilization and disposal of property

The Grantee reserves the right to review and approve all procurements prior to their publication.

Procurement and Contracts Department must provide an independent cost estimate (ICE) of the goods and services to be procured in advance of the procurement. This can be done by City staff with the appropriate expertise and/or credentials or by a procured consulting firm. Procurement and Contracts is responsible for ensuring that there is free and open competition for each procurement pursuant to 2 CFR Part 200.318.

2. Assets

Concerning the purchase of equipment, Columbia Water shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this contract.

VI. GENERAL CONDITIONS

A. Amendments

The Grantee or Columbia Water may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations. Such amendments shall not invalidate this Agreement, nor relieve the Grantee or Columbia Water from its obligations under this Agreement. Amendments will be required when any of the following are anticipated:

1. Revision to the scope or objectives of the Program including purpose or beneficiaries.
2. The need to extend the availability of Grant funds.
3. A revision that would result in the need for additional funding; and
4. Expenditures on items for which applicable cost principles (2 CFR Part E – Cost Principles) require prior approval (see 24 CFR 570.200(h) 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. If such amendments result in a change in funding, the scope of services, or schedule of activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendments signed by both Grantee and Columbia Water.

B. No Assignment

No Party may transfer or assign this Agreement or transfer or assign any of its rights or assign any of its duties hereunder without the express prior written consent of the other Party. However, if the Parties do mutually agree to an assignment, all rights and obligations set forth herein shall inure to the benefit of the Parties and to their respective successors and assigns.

C. Severability

The terms and provisions of this Agreement are severable. Unless the primary purpose of this Agreement would be frustrated, the invalidity or unenforceability of any term or condition of this Agreement shall not affect the validity or enforceability of any other term or provision of this agreement. The Parties intend and request that any judicial or administrative authority that may deem any provision invalid, reform the provision, if possible, consistent with the intent and purposes of this Agreement, and if such a provision cannot be reformed, enforce this Agreement as set forth herein in the absence of such provision.

D. Entire Agreement

This Agreement constitutes the entire understanding and reflects the entirety of the undertaking between the Parties with respect to the subject matter hereof superseding all negotiations, prior discussions, and preliminary agreements. There is no representation of warranty of any kind made in connection with the transactions contemplated hereby that is not expressly contained in this Agreement.

E. Applicable Law and Venue

This Agreement shall be governed by and construed in accordance with all applicable Federal, State, and local laws. Any legal action resulting from the implementation of this Agreement shall be brought and adjudicated in the State of South Carolina.

F. No Personal Liability of Individual Representatives

No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, trustee, officer, agent, or employee of any corporate party in his or her individual capacity, and neither the officers of any Party nor any official executing this Agreement shall be personally liable with respect to this Agreement or be subject to any personal liability or accountability under this Agreement by reason of the execution and delivery of this Agreement.

G. Delay or Omission

No delay or mission in the exercise or enforcement of any right or remedy accruing to a Party under this Agreement shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. The waiver of any condition of the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term covenant or condition herein or therein contained.

H. Conflicting Rules or Procedures

On the occasion that two or more applicable rules, regulations, or procedures related to this Agreement are in conflict with each other, the most proscriptive rule, regulation, or procedures shall apply.

I. Notices

Any notice required or permitted to be given under or in connection with this Agreement shall be in writing and shall be either original hard copy or sent by email, facsimile, or other similar form of rapid transmission. All official communication should contain a confirmation of receipt. All such communications shall be transmitted to the address or numbers set forth below.

Program Compliance	Project Representative Contact
Dollie Bristow, Community Development Administrator	Gregory Tucker Project Manager
Missy Gentry Assistant City Manager for Development	Clint Shealy Assistant City Manager for Columbia Water

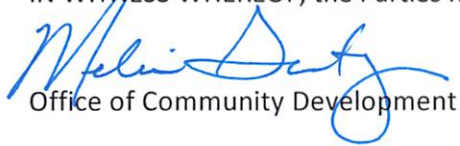
VII. SPECIAL CONDITIONS

A. Environmental Review (24 CFR Part 58)

Columbia Water agrees to support and assist CDD in complying with all aspects of the Environmental Review process.

NOTWITHSTANDING any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and if required, a receipt by the City of Columbia of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part §58. The parties further agree that the provision of any funds to the project is conditioned on the City of Columbia's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.


IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.



Office of Community Development

Missy Gentry


Columbia Water

Clint Shealy


Date


Date

DRAFT