



State Capitol Building
Charleston, WV 25305

July 21, 2020

Dear Berkeley County Commission,

The State Election Commission has approved your CARES subgrant application in the amount of \$74,746.39.

After entering your DUNS number in the Definitions Section (D) and Section E(2), please review, sign, and return the attached subgrant agreement. Upon receipt of your completed subgrant agreement, the Secretary of State's office will return a signed copy and release your funds.

You may return your completed subgrant application by U.S. Mail or by email to calder@wvsos.com (email is preferred).

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Alder", is written over a horizontal line.

Chris Alder

Assistant General Counsel

West Virginia Secretary of State

304-356-2617

HAVA SUBGRANT AGREEMENT

This Help America Vote Act ("HAVA") Subgrant Agreement ("Agreement") is entered into as of this 16th day of June, 2020 by and between the State Election Commission, having an address at: The Secretary of the State of West Virginia, 1900 Kanawha Blvd. E., State Capitol Building, Charleston, WV 25305 and the Berkeley County Commission, having an address of: 400 West Stephen Street, Suite 201 Martinsburg, WV 25401.

This Agreement is made pursuant to the 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which includes emergency funds made available to Grantor under HAVA through the United States Election Assistance Commission ("EAC") for the purpose of preventing, preparing for, and responding to COVID-19, domestically or internationally, for the 2020 federal election cycle ("Purpose").

In consideration of the covenants contained in this Agreement, the parties agree as follows:

DEFINITIONS:

As used in this document, the words and phrases set forth below shall have the following meanings:

A. "Auditors" means the EAC and its Inspector General, Comptroller General of the United States, West Virginia State Auditor, program monitors, or any authorized representatives thereof.

B. "Federal, state and local laws" means all federal statutes and regulations, all state laws, rules, regulations, and administrative rules, all Governor's Executive Orders, any federal Office of Management and Budget ("OMB") circulars applicable to state and local governments, as well as any rules, resolutions, or policies adopted by the Grantee. "Federal, state and local laws" also includes all federal, state and local laws as listed in this Agreement and existing on the effective date of this Agreement as well as those federal, state and local laws that are enacted, adopted, issued, effective, or amended, on or after the date of this Agreement.

C. "Grantor" is the Office of the West Virginia Secretary of State.

D. "Grantee" is the Berkeley County Commission, and is identifiable by DUNS number

1004995141

E. "HAVA" means the Help America Vote Act of 2002 (Pub.L. 107-252), as amended, and includes the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

ARTICLE I. PURPOSE OF THE SUBGRANT

The purpose of the subgrant and this Agreement is to establish the terms, conditions, and requirements governing the administration and use of the funds received by or used by Grantee pursuant to this Agreement for preventing, preparing for, and responding to COVID-19, domestically or internationally, during the 2020 Federal election cycle.

ARTICLE II. RESPONSIBILITIES OF GRANTOR

Grantor agrees to:

A. Provide funding to Grantee in accordance with this Agreement, and all applicable federal and state laws.

B. Provide technical assistance and training as may be reasonably requested to assist Grantee in fulfilling its obligations under this agreement.

C. Take action to recover funds that are not used in accordance with the conditions, requirements, or restrictions applicable to funds disbursed pursuant to this Agreement.

D. Grantor is responsible to monitor Grantee activities as necessary to provide reasonable assurance that Grantee: (1) uses the funds disbursed under this Agreement for authorized purposes only; (2) complies with all federal, state, and local laws; and (3) performs all obligations under this Agreement. Grantee shall fully cooperate and assist Grantor and Auditors. If as a result of its monitoring efforts, an Auditor uncovers deficiencies in Grantee's administration of funds disbursed under this Agreement, Grantor shall notify Grantee in writing. Grantee agrees to take immediate and timely corrective action as determined by the Auditor in an attempt to rectify any identified and reported deficiencies and to resolve the matter as directed by the Grantor.

ARTICLE III. RESPONSIBILITIES OF GRANTEE

Grantee agrees to:

- A. Ensure the funds subject to this Agreement are used to achieve the Purpose in accordance with conditions, requirements and restrictions of federal, state and local laws, as well as all federal terms and conditions of the grant award.

- B. Satisfy all financial reporting requirements as necessary for the county to meet its operational needs and obligations to Grantor and the federal government.

- C. Promptly reimburse Grantor for any funds Grantor pays to any entity because of an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty for which Grantor is responsible. All funds disbursed pursuant to this Agreement that are not expended at the completion of the term must be returned to Grantor by the earlier of: (1) Grantee's submission of its final expenditure report, or (2) February 28, 2021.

- D. Take prompt corrective action, including paying amounts resulting from an adverse finding, sanction, or penalty, if Grantor, the Grantor's auditor, any federal agency, or other entity authorized by federal, state or local law to determine compliance with the conditions, requirements, and restrictions applicable to the federal program from which this subgrant is awarded determines compliance has not been achieved.

- E. Make records available to Grantor, Auditors, federal agencies, and other authorized governmental agencies for review, audit, and investigation.

- F. Use funds disbursed under this Agreement only for the Purpose, and for no other purpose.

- G. Grantee agrees that it shall comply with all applicable federal, state and local laws, regulations, and rules.

- I. Reports and Records.

1. Identification. All reports submitted by Grantee to Grantor must contain the contract ID number, which can be found Berkeley-CARES-01.

2. Required Reports. The Grantee shall comply with all applicable reporting and record retention requirements including all federal, state and local laws.

3. Access to Records. The Auditors shall have the right of timely and unrestricted access to all records of the Grantee, in order to make audits, examinations, excerpts, transcripts, and copies of such documents. Grantee shall further provide Auditors timely and reasonable access to the Grantee's past and present personnel for the purpose of interviewing, and discussing matters related to such records. Auditor's right of access is not limited to the required retention period.

4. Audit Requirements. The Grantee agrees that it has reviewed, understands and will comply with the federal audit requirements of 2 CFR 200 Subpart F as may be applicable, the State HAVA grant requirements of W. Va. Code § 3-1-48, the State accountability requirements of W. Va. Code § 12-4-14, and all Grantee Audit Certification and Federal Expenditure Disclosure requirements.

J. Failure to Perform. Grantee's failure to perform its obligations under this Agreement may result in disallowed costs, suspension, termination of funding, or returned grant monies and any associated fees under this Agreement or according to state or federal law.

ARTICLE IV. TERM OF THE SUBGRANT

A. This Agreement will be in effect from January 20, 2020 through January 31, 2021 unless this Agreement is earlier terminated by written notice by Grantor to Grantee.

B. Provisions in this Agreement relating to Records (generally, Article VI), and Audits (generally, Article VII) shall survive the expiration or termination of this Agreement and remain effective for three (3) years following the later of: (i) the expiration or termination of this Agreement, or (ii) the date of submission of the final expenditure report.

ARTICLE V. AMOUNT OF GRANT; PAYMENTS

A. This subgrant is in the total amount of \$74,746.39 dollars.

B. Payment will be made by Grantor to Grantee on a cost-reimbursement basis unless Grantee received prior written approval from the State Election Commission for a funding advance. The total estimated cost shall be in accordance with the budget approved by the State Election Commission, a copy of which is attached as Exhibit A, and shall not exceed the amount provided in Article V(A). Grantee may provide Grantor invoices for reimbursement of disbursements by submitting an invoice and expenditure report for costs incurred in the performance of this Agreement. Invoices shall be numbered, dated, reference this Agreement, show the cost incurred by budget category (i.e., salaries, fringe benefits, equipment, travel, supplies, etc.) for the billing period and in cumulative amount to date. All invoices shall be submitted to the West Virginia Secretary of State at:

West Virginia Secretary of State
ATTN: HAVA Grants
1900 Kanawha Blvd. E.
State Capitol Building
Building 1, Suite 157-K
Charleston, WV 25305

Grantor will make payment on all invoices submitted in accordance with the terms of this Agreement. All invoices must be submitted by January 31, 2021. Grantor is not obliged to reimburse any expenses submitted after January 31, 2021. Grantee's final invoice shall include a certification that "Payment of this invoice constitutes complete satisfaction of all of Grantor's obligations under the reference Agreement. Grantee releases and discharges Grantor from all further claims and obligations under this Agreement upon payment of this final invoice."

C. Grantee shall incur all costs associated with its performance of this Agreement on or before December 31, 2020. Any funds authorized this Agreement for which costs have not been obligated on or before December 31, 2020 shall be returned to Grantor by January 31, 2021.

D. As a subrecipient of federal funds, Grantee hereby specifically acknowledges its obligations relative to the funds provided under this Agreement pursuant to OMB Circulars A-110 (2 C.F.R.

215), A-87 (2 C.F.R. 225), A-102, as applicable under federal, state and local laws, and A-133, as well as:

1. Standards for financial management systems: Grantee will comply with the requirements of 2 C.F.R. including but not limited to:

- a. Fiscal and accounting procedures;
- b. Accounting records;
- c. Internal control over cash, real and personal property, and other assets (including inventory controls on durable goods);
- d. Budgetary control to compare actual expenditures or outlays to budgeted amounts;
- e. Source documentation; and,
- f. Cash management.

2. Period of Availability of Funds: Grantee may charge to the award only costs resulting from obligations incurred during the funding period of the federal awards noted in this Agreement, and for the term specified in this Agreement.

3. Matching or Cost Sharing: Matching or cost-sharing requirements applicable to this Agreement must be satisfied by disbursements for allowable costs or third-party in-kind contributions and must be clearly identified and used in accordance with all applicable federal, state and local laws. Grantor shall advise Grantee of necessary matching and cost-sharing requirements. For clarity, CARES Act subgrants do not require matching or cost-sharing; HAVA subgrants do require matching or cost-sharing.

4. Non-discrimination: Grantee shall not discriminate in the provisions of any services contemplated by this Agreement, or in the general conduct of its business affairs, on the basis of race, color, creed, religion, sex, national origin, or disability.

5. Real Property: Grantee is authorized to use subgrant funds for the acquisition of real property to further the Purpose.

6. Equipment: Title, use, management (including record keeping, internal control, and maintenance), and disposition of equipment acquired by Grantee with subgrant funds, will be governed by the applicable provisions of 2 C.F.R.

7. Supplies: Title and disposition of supplies acquired by Grantee with subgrant funds will be governed by the applicable provisions of 2 C.F.R.

ARTICLE VI. RECORDS

A. For all expenses reimbursed pursuant to this Subgrant, Grantee shall maintain documentation conforming to all requirements prescribed by federal, state and local laws. Grantee shall prepare and maintain documentation to support all transactions, and to permit the reconstruction of all transactions. Grantee shall further ensure the proper completion of all reports required by federal, state and local laws. Grantee shall further maintain evidence of compliance with all applicable federal, state and local laws.

B. For all expenses reimbursed pursuant to this Subgrant, records must include sufficient detail to disclose:

1. Services provided to program participants;
2. Administrative cost of services provided to program participants;
3. Charges made and payments received for items identified in paragraphs (B)(1) and (B)(2) of this section; and,
4. Cost of operating the organizations, agencies, programs, activities, and functions.

C. Grantee must maintain all records relevant to the administration of this Subgrant for a period of three years from the date of submission of the final expenditure report. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained

until all litigation, claims, or audit findings involving the records have been resolved and final action taken. Records for equipment acquired under this Agreement shall be retained for three years after final disposition of such equipment.

ARTICLE VII. AUDITS OF GRANTEE

A. Grantee agrees to provide for timely audits as required by OMB Circular A-133, unless a waiver has been granted by a federal agency. Subject to the threshold requirements of 2 C.F.R., as applicable, and OMB Circular A-133, Grantee must ensure that it has an audit with a scope as provided in OMB Circular A-133, Subpart E, §500, that covers funds received under this Agreement. Grantee must send a copy of the final audit report to Grantor within two (2) weeks of Grantee's receipt of any such audit report.

B. Grantee will take prompt action to correct all problems identified in an audit.

ARTICLE VIII. SUSPENSION AND TERMINATION, BREACH AND DEFAULT

A. This Agreement may be terminated in accordance with any of the following:

1. The parties may mutually agree to a termination by entering into a written termination agreement that is signed by the Grantor's Director and an authorized officer or employee of Grantee. An agreement to terminate is effective on the later of the date stated in the agreement to terminate or the date it is signed by all parties.

2. Either party may terminate after giving ninety (90) days written notice of termination to the other party by registered United States mail, return receipt requested. The effective date of termination shall be the termination date specified in the termination notice.

B. Notwithstanding the provisions of Article VIII (A), Grantor may suspend or terminate this Agreement immediately upon delivery of a written notice to Grantee, if Grantor loses funding or discovers any illegal conduct on the part of Grantee.

C. If Grantee materially fails to comply with any term of an award, a federal, state and local laws, an assurance, a State plan or application, a notice of award, this Agreement, or any other

applicable rule, Grantor may take any or all of the following actions it deems appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the Grantee, or pursue a more severe enforcement action as authorized by applicable law;
2. Disallow all or part of the cost of the subgrant activity or action not in compliance;
3. Wholly or partly suspend or terminate the current award for the Grantee;
4. Withhold further awards for the subgrant activity; or,
5. Take any other remedies that may be legally available, including but not limited to any additional remedies listed elsewhere in this Agreement.

D. Grantee, upon receipt of a notice of suspension or termination, will do all of the following:

1. Cease the performance of the suspended or terminated subgrant activities under this Agreement;
2. Take all necessary steps to limit disbursements and minimize costs that include, but are not limited to, the suspension or termination of all contracts and subgrants correlated to the suspended or terminated subgrant activities;
3. Prepare and furnish a report to Grantor, as of the date Grantee received the notice of termination or suspension, that describes the status of all subgrant activities and includes details of all subgrant activities performed and the results of those activities; and,
4. Perform any other tasks that Grantor requires.

E. Upon breach or default by Grantee of any of the provisions, obligations, or duties embodied in this Agreement, Grantor will retain the right to exercise any administrative, contractual, equitable, or legal remedies available, without limitation. A waiver by Grantor of any occurrence

of breach or default is not a waiver of subsequent occurrences. If Grantor or Grantee fails to perform any obligation under this Agreement and the failure is subsequently waived by the other party, the waiver will be limited to that particular occurrence of a failure and will not be deemed to waive failures that may subsequently occur.

ARTICLE IX. NOTICES

A. Notices to Grantor from Grantee concerning this Agreement shall be sent to the Grantor at the address specified in the preamble to this Agreement.

B. Notices to the Grantee from Grantor concerning this Agreement shall be sent to at the address specified in the preamble to this Agreement.

C. All notices in accordance with this Article shall be in writing and will be deemed given when received. All notices must be sent using a delivery method that documents actual delivery to the appropriate address herein indicated (*e.g.*, certified mail).

ARTICLE X. AMENDMENT

This document constitutes the entire agreement between Grantor and Grantee with respect to all matters herein. Except as provided in Article XI, only a document signed by both parties may amend this Agreement. Both Grantor and Grantee agree that any amendments to laws or regulations cited herein will result in the correlative modification of this Agreement without the necessity for executing written amendments.

ARTICLE XI. ADDENDUM

Grantor may elect to provide information concerning this Agreement in an addendum hereto. Any addenda to this Agreement will not need to be signed. Any claim on or draw of monies following the receipt of the addendum will constitute acceptance of the terms and conditions contained in the addendum. Subsequently, Grantor may modify any addendum by mailing a modified version to Grantee. Any claim on or draw of the modified addendum will constitute acceptance of the terms and conditions contained in the modified addendum.

ARTICLE XII. SUBGRANT PERFORMANCE

Grantee must perform all duties contemplated by this Agreement. None of Grantee's duties or actions pursuant to this Agreement may be subcontracted, nor shall this Agreement be assigned without the prior express written authorization of Grantor.

Grantor may, in its sole discretion, impose specific subgrant conditions upon Grantee, if appropriate, as described in 2 C.F.R. §200.207 Specific conditions.

Grantor may, in its sole discretion, verify that every Grantee is audited as required by Subpart F—Audit Requirements of 2 C.F.R. 200 when it is expected that the Grantee's grants expended during the term of this Agreement equaled or exceeded the threshold set forth in 2 C.F.R. §200.501 Audit requirements.

Grantor may, in its sole discretion, consider whether the results of the Grantee's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

Grantor may, in its sole discretion, consider taking enforcement action against noncompliant subrecipients as described in §200.338 Remedies for noncompliance of this part and in program regulations.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

A. Limitation of Liability: To the extent permitted by law, Grantor agrees to be responsible for any liability directly relating to any and all acts of negligence by Grantor. To the extent permitted by law, Grantee agrees to be responsible for any liability directly related to any and all acts of negligence by Grantee. In no event shall either party be liable for any indirect or consequential damages, even if Grantor or Grantee knew or should have known of the possibility of such damages.

B. This Agreement will be governed, construed, and enforced in accordance with the laws of the State of West Virginia. Should any portion of this Agreement be found unenforceable by operation of statute or by administrative or judicial decision, the remaining portions of this Agreement will not be affected as long as the absence of the illegal or unenforceable provision does not render the performance of the remainder of the Agreement impossible.

C. Nothing in this Agreement is to be construed as providing an obligation for any amount or level of funding, resources, or other commitment by Grantor to Grantee that is not specifically set forth in state and federal law. Nothing in this Agreement is to be construed as providing a cause of action in any state or federal court or in an administrative forum against the State of West Virginia, the Secretary of State of the State of West Virginia, or any of the officers or employees of the State of West Virginia.

D. Incorporation by Reference

The April 17, 2020 letter by the Secretary of State of the State of West Virginia, and its Attachments A-E as completed by the Grantee as of the date of this Agreement are hereby incorporated by reference.

E. Required Information:

1. Grantee's name: Berkeley County Commission;
2. Grantee's unique entity identifier (DUNS): [DUNS Number]; 08499141
3. Federal Award Identification Number: WV20101001;
4. Federal Award Date: April 06, 2020;
5. Subgrant Period of Performance: January 20, 2020 to December 31, 2020;
6. Amount of Federal Funds Obligated by this action by Grantor to Grantee: \$74,746.39;
7. Total Amount of Federal Funds Obligated to the Grantee by the Grantor, including the current obligation: \$74,746.39;
8. Total Amount of the Federal Award committed to the Grantee by the Grantor, including the current obligation: \$74,746.39;
9. Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA): preventing, preparing for,

and responding to COVID-19, domestically or internationally, for the 2020 federal election cycle;

10. Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity: United States Election Assistance Commission; the West Virginia Secretary of State; Chuck Flannery, West Virginia Deputy Secretary of State, (304) 558-6000;
11. CFDA Number and Name: 90.404;
12. Identification of whether the award is R&D: This Agreement does not contemplate R&D; and,
13. Indirect cost rate for the Federal award (including if the *de minimis* rate is charged per §200.414 Indirect (F&A) costs): 10.0%.
14. Funding Source: EAC1651DB2020XX-2020-61000001-410001-EAC1908000000.

E: Terms of Closeout:

1. Grantee shall permit Grantor access to all documentation and personnel necessary for Grantor to evaluate Grantee's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of this Agreement for purposes of determining the appropriate Grantee monitoring described in subsections (2) and (3) of this section E, which may include consideration of:
 - a. The Grantee's prior experience with the same or similar subawards;
 - b. The results of previous audits including whether or not the Grantee receives a Single Audit in accordance with Subpart F—Audit Requirements of this 2 C.F.R. 200, and the extent to which the same or similar subaward has been audited as a major program;
 - c. Whether the Grantee has new personnel or new or substantially changed systems; and

d. The extent and results of Federal awarding agency monitoring (e.g., if the Grantee also receives Federal awards directly from a Federal awarding agency).

2. Monitor the activities of the Grantee as necessary to ensure that funds disbursed pursuant to this Agreement are used for the Purpose, in compliance with Federal statutes, regulations, and the terms and conditions of this Agreement; and that this Agreement's performance goals are achieved. Grantor shall monitor the Grantee to ensure compliance, such monitoring to include:

- a. Reviewing financial and performance reports required by the Grantor.
- b. Following-up and ensuring that the Grantee takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Grantee from the pass-through entity detected through audits, on-site reviews, and other means.
- c. Issuing a management decision for audit findings pertaining to the Federal award provided to the Grantee from the pass-through entity as required by 2 C.F.R. §200.521 Management decision.

3. Depending upon the Grantor's assessment of risk posed by the Grantee, the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

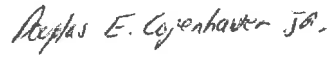
- a. Providing Grantee with training and technical assistance on program-related matters;
- b. Performing on-site reviews of the Grantee's program operations; and,
- c. Arranging for agreed-upon-procedures engagements as described in 2 C.F.R. §200.425 Audit services.

Each of below signatories represent and warrant that they have authority to enter into a binding agreement on behalf of the organizations named in this Agreement with respect to the execution of this Agreement and the matters contained herein.

Accepted and Agreed to by:



West Virginia State Election Commission
MAC WARNER, *ex officio*
West Virginia Secretary of State





Print name:
Board of Berkeley County
Commissioners