

**7-1-3U AGREEMENT
BETWEEN
THE WEST VIRGINIA CONSERVATION AGENCY AND
THE TOWN OF BATH
CONCERNING STREAM RESTORATION, BANK STABILIZATION AND
BLOCKAGE REMOVAL WORK**

THIS 7-1-3U Agreement (Agreement) is made this 27th day of July, 2021 by and between the West Virginia Conservation Agency (WVCA) and the Town of Bath, a political subdivision of the State of West Virginia, (XCC). Authority to enter into this Agreement is found in W.Va. Code §19-21A-4 and W.Va. Code §7-1-3u.

WHEREAS, West Virginia has experienced disastrous flood events that have devastated the state and her citizenry; and

WHEREAS, there exists a substantial need to protect people and property from floods, to respond to the effects of flooding, to minimize stream bank erosion and engage in flood prevention; and

WHEREAS, counties and municipalities have the authority to undertake works of improvement to protect people and property from floods through a variety of methods, including the rechanneling and dredging of streams; removal of accumulated debris, snags, sandbars, rocks and any other kinds of obstructions; and to carry out erosion and sedimentation control measures and programs; and

WHEREAS, the WVCA has the technical expertise to assist counties and municipalities with meeting this authority; and

WHEREAS, the need for such assistance can best be met through cooperative efforts of the Town of Bath and the WVCA;

NOW, THEREFORE, it is hereby agreed between the parties as follows:

I. DEFINED TERMS

As used throughout this Agreement, the following terms have the meaning set forth below:

A. "West Virginia Conservation Agency" means the administrative office of the State Conservation Committee as provided for by W.Va. Code §19-21A-4.

B. "Executive Director of the WVCA" means the Administrator of the West Virginia Conservation Agency as set forth in W.Va. Code §19-21A-4.

C. "The Town of Bath," means a political subdivision of the state created and defined by W. Va. Code §7-1-1.

D. "Stream" means any watercourse, distinguishable by banks and a bed, regardless of its size, which water flows continually or intermittently, regardless of its volume.

E. "In-kind" refers to payment, distribution or substitution of goods and services in lieu of money.

F. "Sub-agreement" means those subordinate agreements entered into between the parties relating to a specific site, or sites, eligible for assistance. Sub-agreements shall include pertinent details for each site.

II. COVENANTS

A. Scope. This agreement covers all work necessary to design and construct projects contemplated under W.Va. Code §7-1-3u. Subordinate agreements (Sub-agreements) will be developed for each project and contain the full scope of work for each site.

B. Cost Share Funding. WVCA and the Town of Bath have agreed to jointly fund work in accordance with a funding formula that will be negotiated for each project and included in the Sub-agreement developed for each planned project.

C. The Town of Bath may provide "in-kind" services or goods in lieu of cash payments to complete projects contemplated under this agreement.

D. None of the stream or bank stabilization projects contemplated under this agreement involve the taking of land through imminent domain.

E. All of the projects contemplated under this agreement shall have their own Sub-agreement that will include, but is not limited to specific scope of work, budget and cost share funding. Not all sub-agreements will contain all possible terms and conditions.

III. FUNDING CONTINGENCY

This agreement is contingent upon both WVCA and the Town of Bath's availability of funds.

IV. THE Town of Bath SHALL:

1. Identify and prioritize potential sites, as requested.
2. Provide an agreed upon portion of cost-share funding, as determined by the negotiated funding formula for each project.
3. Provide competitive contracting services associated with each project, with the assistance of WVCA, including, but not limited to advertising and awarding construction contracts to complete the agreed upon projects using the attached 7-1-3U Projects Contracts Policy

and Procedures, which have been adopted by the Town of Bath for this Agreement and all 7-1-3U Sub-agreements between the parties.

4. Rely on their legislatively granted authority to access the land necessary to implement the agreed upon projects.
5. Obtain all necessary permits to complete the agreed upon project, as requested.
6. Identify temporary and permanent disposal sites in the county.

V. THE WVCA SHALL:

1. Provide technical assistance for the Scope of Work to be completed including permit, design, construction oversight, final inspection, and acceptance of the work performed.
2. Provide technical and administrative support to the Town of Bath in the performance of their contracting services, to include final review and concurrence of the construction contract and final payout to the contractor in accordance with 7-1-3U Projects Contracts Policy and Procedure.
3. Provide engineering services to include contract review, project oversight, inspection of the work, and final acceptance of the work performed under the contract.
4. Pay its own administrative, engineering, and legal costs associated with carrying out its duties and responsibilities.
5. Provide an agreed upon portion of cost-share funding, as determined by the negotiated funding formula for each project.

VI. PROJECTS

1. A committee representing WVCA and the Town of Bath will meet to discuss the Town of Bath's potential site list to determine project suitability and funding availability, and to prepare a recommendation for the Town of Bath to accept or reject, as a governing body.
2. The Town of Bath may reject the committee's recommendation on a project and may elect to complete said project at its own cost. In such cases, to the extent practicable, WVCA will provide technical assistance, but no cost-share funding.
3. The Town of Bath may reject a project and still move forward under this Agreement for all approved projects.

VII. PRINCIPAL CONTACTS:

The parties agree to identify principal contacts for communication purposes related to this Agreement. Should these principal contacts change, the parties agree to notify one another as soon as practicable.

For SCC/WVCA:	For Town of Bath:
Administrative Name: Angela R. Tackett Title: Fiscal Services Manager WV Conservation Agency Address: 1900 Kanawha Blvd East Charleston, WV 25305 Telephone: 304-957-2983 Email: atackett@wvca.us	Administrative Name: Sharron Corrick Title: Town Clerk Address: 271 Wilkes Street Address: Berkeley Springs, WV 25411 Telephone: 304-258-1102 Email: Townofbath@wvdsi.net
Technical Name: Gene Saurborn Title: Director of Watershed Projects Address: 201 Scott Avenue Morgantown, WV 26508 Telephone: 304-285-3118 Email: GSaurborn@wvca.us	Technical: Name: Title: Address: Telephone: Email:

VIII. BILLING AND PAYMENT

1. WVCA agrees to pay their portion of the cost-share funding, within forty-five (45) days of receipt of both 1) a satisfactory final inspection of the project by WVCA, and 2) a properly documented and complete invoice.
2. The Town of Bath agrees to pay its portion of the cost share funding, within forty-five (45) days of receipt of both 1) a satisfactory final inspection of the project by WVCA, and 2) a properly documented and complete invoice.
3. Advancement of up to one hundred percent (100%) of the construction funds to the Town of Bath from WVCA may be available for some projects, at the sole discretion of WVCA. Should an advancement be requested by the Town of Bath, WVCA shall take such measures and necessary steps to protect those funds and meet the requirements of the WV State Auditor's Office for advancements in the project Sub-agreement.

VIII. AMENDMENTS

This Agreement may be amended upon the terms reached in conference upon notice by each party to the other. Such amendment conference shall be attended by the Mayor of the Town of Bath, the Executive Director WVCA and held within ten (10) days after the giving of notice as aforesaid, should any party fail to attend a properly noticed amendment conference, the proposed amendment shall not act to amend this Agreement. For an amendment to take effect it shall be 1) in writing, 2) attached to this Agreement as an addendum hereto, and 3) include the signature of each party to this Agreement.

IX. EFFECTIVE DATE AND TERMINATION

This Agreement becomes effective on the date last signed by the parties and will remain in effect for five (5) years from the effective date. After five years, this Agreement shall be reevaluated. Each party may seek to terminate this agreement at any time, provided that at least thirty (30) days prior written notice of the effective date of termination is given to the other parties.

X. LEGAL NOTICE.

Any legal notices required to be given under this Agreement shall be delivered in person or sent by certified or registered mail

to the Town of Bath at:

Town of Bath
Attn: Scott Merki, Mayor
271 WILKES STREET
BERKELEY SPRINGS, WV 25411

to the WVCA at:

WV Conservation Agency
Attn: Brian Farkas, Executive Director
1900 Kanawha Blvd., East
Charleston WV 25305

XI. MISCELLANEOUS

1. This agreement does not confer any rights or benefits on any third party.
2. This agreement shall be governed by the laws of West Virginia.
3. The terms of this agreement are not intended to alter, amend, or rescind any provisions of State law. Any provision of this agreement, which conflicts with State law, will be null and void.

4. Insofar as any condition or term of this agreement is found, by a court of competent jurisdiction, to be unlawful, the remaining terms and conditions remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this 7-1-3U Agreement to be executed by their duly authorized representatives. The effective date of this Agreement is the date of last signature.

TOWN OF BATH

By: Scott E. Merki,
SCOTT MERKI
MAYOR

July 27, 2021

WEST VIRGINIA CONSERVATION AGENCY

By: _____,
BRIAN FARKAS
EXECUTIVE DIRECTOR

_____, 2021