

COMMUNITY DEVELOPMENT BLOCK GRANT MITIGATION FUNDS

**VIRGIN ISLANDS HOUSING FINANCE AUTHORITY
SUBRECIPIENT AGREEMENT No.: SA-MIT-(DPW)-001-2025**

PROGRAM: RESILIENT CRITICAL & NATURAL INFRASTRUCTURE

BETWEEN

VIRGIN ISLANDS HOUSING FINANCE AUTHORITY

[Grantee]

AND

VIRGIN ISLANDS DEPARTMENT OF PUBLIC WORKS

[Subrecipient]

This SUBRECIPIENT AGREEMENT (“Agreement”) for the use of the **VIRGIN ISLANDS HOUSING FINANCE AUTHORITY (“VIHFA”) COMMUNITY DEVELOPMENT BLOCK GRANT–MITIGATION (CDBG-MIT) funds** is entered into this AGREEMENT on the **02th** day of **April** in the Territory of the United States Virgin Islands between the **Virgin Islands Housing Finance Authority (“Grantee”)**, a body corporate and politic constituting a public corporation and autonomous governmental instrumentality of the Government of the Virgin Islands by the name of the **Virgin Islands Housing Finance Authority, hereinafter “Authority,” located at 3202 Demarara Plaza, Suite 200, St. Thomas, USVI 00802, and the Virgin Islands Department of Public Works, a (“Subrecipient”) located at 8244 Sub Base Charlotte Amalie, U.S. Virgin Islands 00802,** Grantee and Subrecipient are herein jointly referred to as the “Parties”; and

I. RECITALS

WHEREAS, in the aftermath of Hurricanes Irma and Maria, the United States Congress, through the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2018, Public Law 115-123, appropriated approximately Seven Hundred Seventy-Four Million One Hundred Eighty-Eight Thousand Dollars (\$774,188,000) to the U.S. Department of Housing and Urban Development (“HUD”) to be allocated as disaster recovery community development block grants among States, Puerto Rico and the United States Virgin Islands (“USVI”) and other eligible government entities to provide crucial funding for mitigation and electrical power system improvements and to assistance in areas impacted by recent disasters to carry out strategic and high-impact activities to mitigate disaster risks and reduce future losses; and

WHEREAS, the USVI submitted to HUD, and on July 21, 2021, HUD approved a “Community Development Block Grant Mitigation Action Plan (“Action Plan”), detailing a range of Projects to address the Virgin Island’s substantial unmet needs and recovery relief after Hurricanes Irma (FEMA-4335-DR) and Maria (FEMA-4340-DR); and

WHEREAS, based on the approved Action Plan, the USVI has received HUD Community Development Block Grant Mitigation funding (“CDBG-MIT”) for hurricane disaster recovery; and

WHEREAS, pursuant to FR-6109-N-03 (September 10, 2019) the USVI received a third allocation of \$774,188,000, to address USVI’s substantial unmet needs and recovery relief after Hurricane(s) Irma and Maria; and

WHEREAS the USVI executed **Grant Agreement No.: B-18-DP-78-0002**, with HUD, to use CDBG-MIT funds for the necessary expenses related to disaster relief projects, long-term recovery, restoration of housing, infrastructure, and economic revitalization in the impacted and distressed areas in the USVI; and

WHEREAS the VIHFA is the Grantee of the CDBG-MIT funds; and

WHEREAS the purpose of this Agreement is to set forth the terms and conditions by which the Grantee will provide the Subrecipient with the CDBG-MIT Project funding for the Subrecipient’s use in the implementation of the specific *Projects*, as outlined in the Action Plan, approved by HUD,

WHEREAS the USVI submitted to HUD the First Substantial Action Plan Amendment for CDBG-MIT funds on September 8, 2023, to facilitate the Propane Infrastructure Acquisition Project and

WHEREAS HUD completed its review of the First Substantial Action Plan Amendment on October 16, 2023, and found no basis to disapprove of the proposed amendment; and

WHEREAS, pursuant to the terms and conditions set forth in this Agreement, including the Appendices hereto, implementation of the specific Projects described in the approved Action Plan will be undertaken by the Subrecipient; and

WHEREAS implementation of the Action Plan Projects shall be undertaken in compliance with the Federal, and territorial laws and regulations as well as the requirements of the CDBG-MIT Project and federal cross-cutting requirements including the National Environmental Policy Act of 1969 ("NEPA"), as amended; and

WHEREAS activities undertaken under this agreement and benefits determined for Subrecipient shall not duplicate Projects or benefits provided to the USVI through other Federal recovery Projects, private benefits or benefits gained from non-profit entities, including those run by the Federal Emergency Management Agency ("FEMA"), and coordinated with such resources; and

WHEREAS the Subrecipient will manage all project(s) for the Grantee with an approved budget of **\$124,400,000.00**, funds allocated from Grant Agreement No. B-18-DP-78-0002, under the **Resilient Critical and Natural Infrastructure Program**.

WHEREAS the Parties wish to set forth, in this Agreement, their mutual understanding regarding

their respective roles and responsibilities in implementing the activities set forth in the Action Plan and any Action Plan Amendments that may ensue.

WHEREAS CDBG-MIT funds made available for use to the Subrecipient under this Subrecipient Agreement requires that use of funding must be in accordance with the Action Plan, and any subsequent amendments, requirements imposed by Federal Statutes, Regulations, and the terms and conditions of the CDBG-MIT Federal Grant Award.

NOW THEREFORE, in consideration of the principles, assurances and promises contained herein, the Virgin Islands Housing Finance Authority and the **Department of Public Works** acting as a Subrecipient, hereby agree to the following terms and conditions to govern the administration, implementation, monitoring, and oversight of any CDBG-MIT funds to be allocated under this Project as outlined in the Action Plan, et. al.

II. GENERAL INFORMATION

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

General Information:

| | |
|---------------------------------------|--|
| Name of Grantee: | Virgin Islands Housing Finance Authority |
| Name of Awarding Official: | Eugene Jones, Jr. |
| Title: | Executive Director |
| Address: | 3202 Demarara Plaza Suite 200 |
| City, State, ZIP: | St. Thomas, VI 00802 |
| Email Address: | ejones@vihfa.gov |
| Phone Number: | 340-777-4432 |
| Grantee Unique Identifier: | CJIG NN7K KH58 |
| | |
| Name of Subrecipient: | Virgin Islands Department of Public Works |
| Name of Subrecipient Primary Contact: | Derek Gabriel |
| Title: | Commissioner |
| Address: | 8244 Sub Base |
| City, State, ZIP: | St. Thomas, VI 00802 |
| Email Address: | Derek.gabriel@dpw.vi.gov |
| Phone Number: | 340-776-4844 |
| Subrecipient Unique Identifier | YEYTW8NR6KG6 |

| | |
|---|--|
| Federal Award Identification Number (FAIN): | B-18-DP-78-0002 |
| Catalog of Federal Domestic Assistance (CFDA) Number and Award: | 14.228 Community Development Block Grants/ State's Program |
| Federal Award Date: | September 10, 2019 |
| Grant Number: | B-18-DP-78-0002 |
| Federal Award Project Description: | Veterans Drive Mitigation Improvement Project Phase 2 |
| Subaward Period of Performance as defined in Section VI of this Agreement: | April 2, 2025 – April 30, 2029 |
| Amount of CDBG-MIT Funds Committed to the Subrecipient by the Grantee: | One Hundred Twenty-Four Million, Four Hundred Thousand and Zero Cents (\$124,400,000.00) |
| Amount of Federal Funds Obligated by this Agreement: | \$124,400,000.00 |
| Total Amount of Federal Funds Obligated to the Subrecipient Agreement is not to exceed: | \$124,400,000.00 |

III. TERMS AND CONDITIONS

A. Exhibits

The following attachments are incorporated into this Agreement by reference and are hereby made part of this Agreement.

| | |
|-----------|--|
| Exhibit A | Scope of Work. |
| Exhibit B | Key Activities, Timelines, and Performance Goals |
| Exhibit C | HUD Rider |
| Exhibit D | Contractor Performance |
| Exhibit E | Non-Conflict of Interest Certification. |
| Exhibit F | Monthly Status Report |
| Exhibit G | Special Conditions |
| Exhibit H | Timelines of Key Milestones |

IV. STATEMENT OF WORK

Scope of Services

The subrecipient shall provide the services set forth below and in accordance with the established budget. Subrecipient shall also complete and submit the performance report(s) substantially in the form attached hereto as **Exhibit A (“Scope of Work”)**.

Subrecipient Management Responsibilities

The Subrecipient has submitted to the Grantee the required project application forms and supporting documentation. provided by the Grantee. The project application was evaluated for program eligibility requirements and available budget allocations and was subsequently approved. Upon executing this agreement, the Subrecipient can begin project implementation. All services included in **Exhibit A (“Scope of Work”)** and described in the project application, shall be performed in accordance with the VIHFA guidelines, HUD guidelines and regulations, and other applicable state and federal laws and regulations.

The Subrecipient shall prepare and submit to VIHFA all required project documentation such as procurement documentation, construction drawings and specifications, construction and environmental permits and endorsements, cost estimates, property acquisitions, implementation plans, etc. in accordance with **Exhibit A (“Scope of Work”)** and **Exhibit F (“Project Application”)**. VIHFA reserves the authority and discretion to review and require revisions before approving the use of funds for projects.

Eligible Use of Funds

As a condition of receiving CDBG-MIT funds, the Subrecipient shall provide project management and implementation for the **Veterans Drive Mitigation Improvement Project Phase 2** under the Resilient Critical and Natural Infrastructure Program as stated in the Action Plan Amendment which includes performing all work described in this section. The Subrecipient shall complete the activities in a manner satisfactory to the Grantee and consistent with the terms of the conditions of this Agreement and applicable Federal statutes and regulations.

Prohibited Activities

The Subrecipient may only carry out the activities described in this Agreement. The Subrecipient is

prohibited from charging to the CDBG-MIT grant the costs of CDBG-MIT ineligible activities, including those described at 24 CFR 570.207.

A. General Administration of CDBG-MIT Funds

All costs are determined to be Activity Delivery Costs (ADCs). ADCs are those allowable costs incurred for implementing and carrying out eligible CDBG-MIT activities. All ADCs are allocable to a CDBG-MIT activity, including direct and indirect costs integral to the delivery of the final CDBG- MIT assisted activity.

B. Pre-Award Costs

Pre award costs are prohibited under this Agreement.

C. National Objectives

All activities funded with CDBG-MIT funds must meet the criteria for one of the CDBG-MIT Program's National Objectives.

The Grantee and the Subrecipient certifies that all activities carried out under this Agreement shall meet the following national objective(s) and satisfy the following criteria:

1. Benefiting Low-to-Moderate Income Individuals to include the subcategory of Low - Moderate Area Benefit (LMA)

D. Level of Accomplishments- Performance Goals and Timelines

The Subrecipient shall complete the activities required under this Agreement in **Exhibit A** ("Scope of Work") in accordance with the following timeframes and performance goals set forth in **Exhibit B** ("Key Activities, Timelines, and Performance Goals") of this Agreement, herein attached and made an integral part of this Agreement.

E. Staffing

The Subrecipient shall supervise and direct the completion of all activities under this agreement. The Subrecipient shall identify the key personnel working on their project(s). Grantee had identified Key Personnel as:

- Commissioner Derek Gabriel
- Rueben Jennings, Assistant Commissioner
- Karole McGregor, Deputy Commissioner
- Kinila Callendar, Chief of Staff
- Jomo McClean, Federal Highway Program Manager
- Kizma Petersen, Chief Procurement Officer

The Subrecipient must notify the Grantee of any changes in the Key Personnel assigned or their responsibilities under these activities. All notifications shall be submitted to the grantee in writing within 30 days of change in key personnel.

Within sixty (60) days of this executed agreement, the Subrecipient must provide the Grantee with a list of all key personnel working on CDBG-MIT funded projects.

The subrecipient is required to inform the Grantee about any professional services procured.

This involves providing the Grantee with copies of the contracts, ensuring these contracts are focused on deliverables. The subrecipient must also supply a list of experts involved in each contract who will work on the CDBG-MIT projects. Additionally, the contracts should clearly outline the payment structure for the professional services staff and include clauses that specify a maximum limit on the amount that can be billed ("not to exceed" clauses).

V. PERFORMANCE MONITORING & REPORTING

A. Monitoring

The Grantee shall monitor the performance of the Subrecipient as necessary and in accordance with regulations on Subrecipient Monitoring and Management, 2 CFR 200.330 – 2 CFR 200.332, to ensure compliance with all requirements of this Agreement, including the timeframes and performance goals associated with the activities. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within 10 days after being notified by the Grantee, the Grantee may impose additional conditions on the Subrecipient and its use of CDBG-MIT funds consistent with 2 CFR 200.207, suspend or terminate this Agreement, or initiate other remedies for noncompliance as appropriate and permitted under 2 CFR 200.338.

B. Reporting

The Subrecipient shall submit regular monthly progress and financial reports to the Grantee detailing the status of deliverables with a breakdown on project progress and meeting performance goals and timelines on the reporting template. See Exhibit G, the Monthly Status Report. The subrecipient shall meet the following benchmarks and report as indicated:

Monthly Status Report will be required on the 20th of each month. This monthly report will cover the project progress achievements, milestones and key performance measures of the prior month. The first monthly report is due in the month following the performance start date.

Quarterly Benchmarks:

Table 1. Quarterly Benchmarks

| Reporting Month | Report Due Date | Reporting Period | Subrecipient must have for Reimbursement of % |
|------------------|-----------------|---------------------|---|
| 5 th | July - 2025 | January- June 2025 | 2% |
| 12 th | January - 2026 | July- December 2025 | 5% |
| 17 th | July - 2026 | January- June 2026 | 25% |
| 22 nd | January -2027 | July- December 2026 | 50% |
| 27 th | July -2027 | January- June 2027 | 70% |
| 32 nd | January-2028 | July- December 2027 | 80% |
| 37 th | July-2028 | January- June 2028 | 100% |

C. Non-Performance

If at the end of **six (6)** months from the Effective Date, as defined in Section VI of this Agreement, Period of Performance or any time during the term the Program activity has not accomplished the performance goals set forth by **Exhibit B** (“Key Activities, Timelines, and Performance Goals”) or have missed two performance benchmarks as outlined in Section B: Reporting of this section within two reporting quarters, the Grantee may, at its sole discretion, terminate this Agreement, de-obligate funds made available under this Agreement and/or recapture funds previously expended by the Subrecipient under this Agreement from non-federal funds. No contract extensions shall be granted unless the Subrecipient can document circumstances beyond its control that prevented the start of performance of the activity or the performance measures.

VI. BUDGET

The Subrecipient shall complete all activities in this Agreement in accordance with the appropriate project budget. The project has received a preliminary review and approval from VIHFA prior to moving through the environmental review. The Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget(s) must be approved in writing by both the Grantee and the Subrecipient. However, in no case shall any such amendments, revisions or reallocations exceed the total allocation of CDBG-MIT Funds without prior written consent of the Grantee. All budget costs must be reasonable, eligible, and allowable.

A. Budget Table

| Project Name | Project Type | Source | Cost (Direct) |
|--|-----------------------------|----------|-------------------------|
| Veterans Drive Mitigation Project Phase II | Public Facility Improvement | CDBG-MIT | \$124,400,000.00 |
| | | Other | \$73,000,000.00 |
| Total | | | \$197,400,000.00 |

Project Direct Cost

| Project Direct Cost | Total CDBG-MIT | Other Funds | Other Funding Description | Total Amount |
|-------------------------------|----------------------|---------------------|---------------------------|----------------------|
| Construction – Roadway | \$28,900,000 | \$25,000,000 | GARVEE | \$53,900,000 |
| Cost Construction – Utilities | \$21,000,000 | \$8,000,000 | GARVEE | \$29,000,000 |
| Construction – Structural | \$41,500,000 | \$21,000,000 | RAISE | \$62,500,000 |
| Construction - Drainage | \$33,000,000 | \$5,000,000 | GARVEE | \$38,000,000 |
| Streetscape Improvements | - | \$14,000,000 | GARVEE & RAISE | \$14,000,000 |
| Total | \$124,400,000 | \$73,000,000 | | \$197,400,000 |

In no case shall any such revisions or reallocations exceed the budgeted CDBG-MIT allocation without prior written consent of VIHFA and the necessary Federal and Territory consent. All budgeted costs shall be reasonable, eligible, and allowable.

B. Program Income

Program income is defined as gross income generated from the use of CDBG-DR/MIT funds. This

includes proceeds from the disposition by sale or long-term lease of real property; proceeds from the disposition of equipment, gross income from the use or rental of real or personal property, payments of principle and interest on loans, proceeds from the sale of loans, proceeds from the sale of obligations secured by loans, funds collected through special assessments, gross income paid from the ownership interest in a for-profit entity , and interest earned on program income.

Program income does not include the total amount of funds that is less than \$35,000 received in a single year or, received over the life of the grant, and certain development activities carried out by certain types of entities, as defined under section 105(a)(15) of the HCDA.

The Subrecipient shall report to the Grantee all program income, as defined in 24 CFR 570.500(a), generated by Program activities carried out with CDBG-MIT funds. The Subrecipient and the Grantee shall follow the program income guidelines in accordance with 24 CFR 570.504. The Subrecipient shall return to the Grantee any program income received monthly and must alert the Grantee within 30 days if program income was generated. All provisions of this Agreement shall apply to activities for which the Subrecipient uses Program income.

VIHFA may authorize the Subrecipient to retain the program income but is not required to do so. All Program Income generated by activities carried out with the CDBG-MIT funds must be returned to VIHFA if retention of such is not previously authorized by VIHFA.

The Subrecipient shall notify VIHFA, within forty-eight (48) hours of receipt, of any Program Income generated by activities carried out with CDBG-MIT funds made available under this Agreement. Program Income is subject to all applicable CDBG-MIT laws, regulations and VIHFA's policies and procedures for so long as it exists. Any interest earned on cash advances from the U.S. Treasury or interest paid on CDBG funds held in a revolving fund account is not Program Income and shall be remitted promptly to the VIHFA for transmittal to the U.S. Treasury no less frequently than annually.

VIHFA will later notify the Subrecipient in writing the applicable procedures for the return or reversion of Program Income to the VIHFA, and such notification shall be deemed incorporated by reference to this Agreement.

C. Indirect Costs

All work performed will be activity delivery costs. Indirect costs may **not** be charged to this award.

D. Direct Costs

VIDPW shall comply with the terms and conditions set forth in the contractual agreement, including the budget and the applicant's submitted application. All direct costs associated with project activities will be supported by clearly defined contractual agreements, with specific deliverables. Cost-plus a percentage of cost accounting or cost-plus a of cost percentage payments will not be permitted.

VIDPW is required to adhere to the distribution schedule as outlined in the application. Any changes to the distribution schedule must be communicated to the Grantee in writing at least 60 days prior to the proposed change or revision.

It is the responsibility of VIDPW to proactively monitor its contractors and service providers, ensuring effective oversight of project activities and compliance with the disbursement schedule. All contracts, payments, and reimbursement requests must be tied directly to deliverables, which must be validated, verified, and certified by VIDPW prior to submission for payment to the Grantee.

Note that cost items for mobilization must be tied to a specific deliverable and outlined in a contractual agreement that includes other milestones, tasks, and project scope that collectively result in the completion of the project. Otherwise, the use of mobilization as a budget line item will be deemed an ineligible expense.

VII. PERIOD OF PERFORMANCE AND TERM

The period of performance for the Subrecipient, meaning the time during which the Subrecipient may incur new obligations to carry out activities under this Agreement, shall start on the **2nd day of April** and end on the **30th day of April 2029** or upon the revision of the grant period, whichever occurs first.

Extensions

The term of this Agreement shall not exceed the lifetime of the Initial Grant Agreements between VIHFA and HUD, unless the term of the Initial Grant Agreement is extended by HUD, in which case the term of this SRA cannot exceed the extension of the **Grant**.

A. Implementation of the Agreement and Assurances

1. The Subrecipient shall comply with said CDBG-MIT and federal regulations and for implementing the Project in a manner satisfactory to the VIHFA and HUD and consistent with any applicable guidelines and standards that may be required as a condition of the VIHFA's providing the Grant Funds, including but not limited to all applicable CDBG-MIT Project Administration and Compliance requirements set forth by this Agreement. The Grantee's providing of CDBG Grant Funds under this Agreement is specifically conditioned on the Subrecipient's compliance with this provision and all applicable CDBG-MIT regulations, guidelines, and standards, including compliance with 24 CFR 570.900 et seq., governing performance reviews and remedial action.
2. The Subrecipient shall be responsible for requiring its contractors/vendors (and all subcontractor tiers) to adhere to all applicable Territory and Federal laws and regulations, and to conduct all necessary monitoring for such compliance. As to laws and regulations applicable to the use of CDBG funds and to any other laws and regulations that may apply to construction projects, the Subrecipient shall be responsible for determining the applicable laws and regulations and ensuring compliance therewith.

3. Notwithstanding the foregoing, the Subrecipient shall comply with the terms of the environmental review, decision-making, and other action that would otherwise apply to HUD under the National Environmental Policy Act of 1969 and other related provisions of law. The Subrecipient agrees, however, that it will not commit any Grant Funds to a project or start any work associated with a project until it has approval from the Grantee's CDBG-MIT Environmental Department, which is charged by HUD with evaluating all CDBG-MIT funded projects, and until such time in which HUD approves a certification of compliance with environmental laws and request for release of funds.
4. The Subrecipient shall comply with all applicable Federal CDBG-MIT, and cross-cutting statutes and regulations subject to waivers cited in the applicable Federal Register notices, Department of Housing and Urban Development, Allocations, Common Application, Waivers, and Alternative Requirements for the Grantee receiving CDBG-MIT Funds.

B. Performance and Timeline Requirements

The Subrecipient shall complete the required activities under **Exhibit A** and in **Exhibit B**, including 100% expenditure of allocated funds, within the timeframes outlined in **Exhibit B**.

The Subrecipient shall comply with the projects' draw down request terms and agrees to use best efforts to comply with benchmarks as outlined in the Reporting section of this Agreement. Grant Funds not anticipated to be expended by the outlined deadline, or extended, are subject to recapture and reallocation to other eligible CDBG-MIT Projects areas and/or Territorial agencies.

This Agreement and its terms and conditions shall remain in effect during any period that the Subrecipient has control over CDBG-MIT funds provided through this Agreement, including program income as defined in 24 CFR 570.489(e), 83 FR 5844, and 83 FR 40314.

VIII. PAYMENT

Subrecipient shall only seek a total payment amount **not to exceed \$124,400,000** from the CDBG-MIT Fund for Program services provided under this Agreement.

The Subrecipient shall submit to the Grantee requests for payments of activities under this Agreement and consistent with the approved budget (the "Request for Payment") within ten (10) days from the last date of each month of the agreement and/or as needed. Each Request for Payment shall be broken down into requested draws against the budget line items specified in **Section VI**.

Payment will be made upon submission by the Subrecipient of a properly executed Request for Payment Package, together with deliverables necessary to justify payment. The Request for Payment form must also be accompanied by documentation from the Subrecipient demonstrating that all activities for which payment is requested have been made in accordance with this Agreement.

The Grantee will review the Request for Payment and any associated documentation and process the payment accordingly. The Grantee may request additional information or invoice details from the

Subrecipient at its discretion.

The Grantee will authorize the Subrecipient the payment through allocation of CDBG-MIT funds available under this Agreement based upon information submitted by the Subrecipient for allowable costs permitted under this Agreement and consistent with the approved budget. With the exception of advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. The Grantee will adjust payment accordance with advance fund and program income balances available in Subrecipient accounts. The Grantee shall not pay any advance or reimburse any costs not consistent with this Agreement or costs not consistent with federal statutes, regulations (including Cost Principles in 2 CFR Part 200, subpart E), the terms and conditions of the CDBG-MIT award, or any costs that would otherwise result in the Grantee charging improper, unauthorized, or otherwise unallowable costs to the award.

Additionally, for the Subrecipient to receive payment for any work performed hereunder, the following certification must be included in each Request for Reimbursement submitted to the VIHFA:

“ Under penalty of absolute nullity, I hereby certify that no public servant of the government entity is a party to or has an interest of any kind in the profits or benefits to be obtained under the contract, which is the basis of this invoice, and should they be a party to, or have an interest in, the profits of benefits to be obtained under the contract, a waiver has been previously issued. The only consideration to provide the contracted goods or services under the contract is the payment agreed upon with the authorized representative of the government entity. The amount that appears in the invoice is fair and correct. The work has been performed, the goods have been delivered, and the services have been rendered, and no payment has been received therefore.”

IX. AMENDMENTS

This Agreement shall only be amended in writing and executed by duly authorized representatives of both Parties. Amendments shall not invalidate this Agreement, nor relieve or release either Party except as may otherwise be provided.

The Grantee may, in its discretion, require that this Agreement be amended to conform to federal, or Territorial governmental laws, regulations, guidelines, policies and available funding amounts. If any such amendment would result in a change in the funding, the activities, or schedule of the activities to be performed under this Agreement or the Grant Funding Sub-Agreement, such changes shall be incorporated by written amendment signed by the Grantee and the Subrecipient.

X. SUSPENSION OR TERMINATION

A. Suspension or Termination for Cause

The Grantee may terminate this Agreement, in whole or in part, if the Subrecipient materially fails to comply with any term of this Agreement, which shall include, but not be limited, to the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may be applicable at any time.
2. Failure, for any reason, of the Subrecipient fulfill in a timely and proper manner the material obligations under this Agreement.
3. Submission of incorrect or incomplete reports to the Grantee in any material respect as determined by VIHFA, HUD or their auditors.
4. Ineffective or improper use of CDBG-MIT Funds as provided for under this Agreement.
5. Failure of the Subrecipient to approve and provide an approved budget to the VIHFA for fulfillment of this Agreement.

The Grantee shall promptly notify the Subrecipient, in writing, of its determination and the reasons for the suspension or termination together with the date on which the suspension or termination shall take effect and any other notifications required under 2 CFR part 200, subpart D. The Grantee agrees that it shall not exercise its right to suspend or terminate this Agreement until it has given written notice to the Subrecipient of the alleged non-compliance and has given the Subrecipient thirty (30) business days after the Subrecipient's receipt of such notice, to correct and/or cure, the alleged noncompliance. The Subrecipient may request additional time in writing to correct the alleged non-compliance which may or may not be granted by the Grantee. If the non-compliance cannot be corrected and/or cured, the Subrecipient shall, unless the termination or suspension notice directs otherwise, immediately discontinue all activities relating to this Agreement, except as may otherwise be legally required pursuant to a binding commitment to perform.

Upon termination, the Grantee retains the right to recover any improper expenditures from the Subrecipient and the Subrecipient must return to the Grantee any improper expenditures no later than thirty (30) business days after the date of termination. The Grantee may, at its sole discretion, allow the Subrecipient to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled provided that said costs meet the provisions of this Agreement, 2 CFR Part 200, Subpart E, Cost Principles, and any other applicable state or Federal statutes, regulations, or requirements.

B. Suspension or Termination for Convenience

This Agreement may also be terminated in whole or in part by either the Grantee or based upon agreement by both the Grantee and the Subrecipient and in accordance with the requirements in 2 CFR part 200, subpart D. The Grantee may at any time give written notice to the Subrecipient terminating this Agreement within thirty (30) business days or suspending the Agreement, in whole or in part, for the Grantee's convenience and without cause. If the Grantee terminates this Agreement or suspends the Project, the Subrecipient shall promptly reduce staff, services and/or outstanding commitments to minimize the cost of termination or suspension. In case of termination for the Grantee's convenience, the Subrecipient shall be entitled to receive payment for Services executed prior to termination, together with reimbursable expenses, if applicable, then due through the date of termination and reasonable costs incurred by reason of such termination for which the Subrecipient

is not otherwise compensated.

C. Termination Due to Unavailable Funding

This Agreement is contingent upon the appropriation and release of CDBG-MIT funds to the VIHFA to fulfill the requirements of this Agreement. If the funds anticipated for the budget/funds in this Agreement are, at any time, not forthcoming or sufficient, either through the failure of the Federal government to provide funds or the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to VIHFA, the VIHFA has the right upon ten (10) business days written notice to the Subrecipient, to terminate this Agreement without damage, penalty, cost or expenses to VIHFA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

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

Termination of this Agreement under any of the foregoing provisions shall not alter or diminish the Subrecipient's obligations governing the use of CDBG-MIT funds under applicable statutes, federal notices, and regulations or under this Agreement and/or shall not terminate any of the Subrecipient's obligations that survive the termination of this Agreement. Such obligations and/or duties may include but are not limited to the following:

- (1) the duty to maintain and provide access to records.
- (2) the duty to monitor and report on the use of any CDBG-MIT funds expended or awarded in compliance with all terms, conditions, and regulations herein.
- (3) duty to enforce compliance with the terms of CDBG- MIT grants; and
- (4) duty to monitor, collect and manage Program Income, if applicable.

E. Payment upon Suspension or Termination

1. *Payment upon Suspension or Termination for Cause:* Upon termination, the Grantee retains the right to recover any improper expenditures from the Subrecipient and the Subrecipient must return to the Grantee any improper expenditures no later than thirty (30) business days after the date of termination. The Grantee may, at its sole discretion, allow the Subrecipient to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled provided that said costs meet the provisions of this Agreement, 2 CFR Part 200, Subpart E, Cost Principles, and any other applicable state or Federal statutes, regulations, or requirements.
2. *Payment upon Suspension or Termination For Convenience:* In the matter of suspension or termination for convenience, the Subrecipient shall be entitled to payments on approved invoices submitted to the VIHFA CDBG-MIT Finance Department no later than thirty (30) days from the date of termination contained within the notice, to the extent payment requests represent Eligible Activities satisfactorily completed during the term of this Agreement and otherwise reimbursable under the terms of this Agreement.

F. Period of Transition

Upon termination of this Agreement, and for sixty (60) consecutive days thereafter (the "Transition Period"), Subrecipient agrees to be available to assist VIHFA with the transition of services assigned

to the Subrecipient by VIHFA. The Subrecipient shall provide VIHFA with assistance as requested to facilitate the transfer of responsibility for the performance of the Services to VIHFA or a third party designated by the VIHFA. VIHFA reserves the right to provide for the execution of a Transition Services Agreements for the Transition Period. In such an instance, the Subrecipient will be paid at a reasonable, agreed upon, rate for any work performed for VIHFA during the Transition Period. During this period, all records, files, documentation, etc. will be turned over to VIHFA. VIHFA reserves the right to request any additional documentation pertaining to this matter at least four years after termination.

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

The CDBG-MIT funds available to the Subrecipient through this Agreement constitute a subaward of the Grantee's Federal award under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. This Agreement includes the terms and conditions of the Grantee's award that are imposed on the Subrecipient, and the Subrecipient agrees to carry out its obligations in compliance with all the obligations described in this Agreement.

A. General Compliance

The Subrecipient shall comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 CFR part 570, as modified by the Federal Register notices that govern the use of CDBG-MIT funds available under this Agreement. These Federal Register notices include, but are not limited to, 83 FR 5844 (February 9, 2018), 83 FR 40314 (August 14, 2018), FR-6109-N-03 (September 4, 2019) and FR-6109-N-02 (August 30, 2019).

Notwithstanding the foregoing, (1) the Subrecipient does not assume the any of VIHFA's CDBG-MIT Environmental Department's responsibilities for environmental review, decision-making, and action, described in 24 CFR part 58 and (2) the Subrecipient does not assume any of the Grantee Department's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient shall also comply with all other applicable Federal, state, and local laws, regulations, and policies that govern the use of the CDBG-MIT funds regardless of whether CDBG-MIT funds are made available to the Subrecipient on an advance or reimbursement basis.

B. Section 312 of the Stafford Act- Duplication of Benefits

The Subrecipient shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and the Emergency Assistance Act (42 USC 5155) and as described in the Appropriations Act. Funds will be allocated back to the Grantee if the Subrecipient has received other disaster assistance funding for the same purposes as under this Agreement.

The Subrecipient agrees to reimburse/reallocate the funding it receives pursuant to this Agreement back to the Grantee if the Subrecipient later receives other disaster assistance funding for the same purposes as under this Agreement. Additionally, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-MIT activity,

if there is no duplication of benefits of federal funds. This includes programs or activities administered by, but not limited to, FEMA, the United States Environmental Protection Agency ("EPA"), the United States Department of Transportation ("DOT"), or the U.S. Army Corps of Engineers ("USACE").

C. Drug-Free Workplace

The Subrecipient hereby certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 24 CFR 21. Further, the Subrecipient will endeavor to ensure that Contractors/Subcontractors and any third parties providing Project services are in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 24 CFR Part 21.

D. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

The Subrecipient must comply with the applicable provisions in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. These provisions include:

1. Financial & Program Management

The Subrecipient shall expend and account for all CDBG-MIT funds received under this Agreement in accordance with 2 CFR part 200, including 2 CFR part 200, subpart D, which covers Standards for Financial and Program Management.

2. Cost Principles

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

- i. Depreciation methods for fixed assets shall not be changed without the approval of the Federal cognizant agency.
- ii. Fines, penalties, damages, and other settlements are unallowable costs to the CDBG program.
- iii. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR 200.445).
- iv. Organization costs (2 CFR 200.455); and

E. Financial Management System

1. The Grantee may review the adequacy of the financial management system of the Subrecipient under this Agreement at any time subsequent to the signing of the Agreement. If Grantee determines that the Subrecipient's accounting system under the Agreement does not meet the standards described in this section, additional information to monitor the Agreement may be required by the Grantee upon written notice to the Subrecipient, until such time as the system meets with the Grantee's approval. The Subrecipient will notify the Grantee as soon as practicable if the Subrecipient cannot comply with the requirements established in this section of the Agreement.
2. The Subrecipient's financial management system shall be consistent with the standards set forth 24 CFR 85.1 et seq. and 24 CFR 85.20 et seq., and 2 CFR Part 200, Subpart D, Post Federal Award Requirements and Standards for Financial and Program Management, and the requirements for Payment Request in Appendix E, and the requirements for Records and Records Retention in Section XI (F- Documentation and Recordkeeping).
3. The Subrecipient shall maintain accurate, current, and complete reports for disclosure of financial results in a format which conform with generally accepted principles of accounting and reporting:
 - a. Accounting Records: Maintain records that adequately identify the source and application of the CDBG-MIT Funds.
 - b. Internal Control: Maintain effective internal and accounting controls over CDBG Funds provided to the Subrecipient under this Agreement. The Subrecipient shall adequately safeguard all such funds and assure that they are used solely for authorized purposes. The Subrecipient's records shall distinguish Grant Funds for its Activities from those to be reimbursed to any Subrecipient.
 - c. Budget Control: Provide for the comparison of the actual expenditures or outlays with budgeted amounts.
 - d. Allowable Costs: Implement procedures to determine the reasonableness and acceptability of costs consistent with this Agreement.
 - e. Disbursement Management: Establish procedures to minimize the time elapsed between the receipt of funds from the Grantee and disbursement by the Subrecipient Department.
4. Reversion of Assets: The use and disposition of immovable property, equipment and remaining CDBG-MIT Funds under this Agreement shall be in compliance with all CDBG-MIT regulations, which include but are not limited to the following:
 - a. The Subrecipient shall return to the Grantee any Grant Funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination of this Agreement.
 - b. In all cases in which equipment acquired, in whole or in part, with CDBG-Funds is sold, the proceeds shall be reviewed to determine if they are Program Income, as defined in 2 CFR Part 200.80, and prorated to reflect the extent to which CDBG-MIT Funds received

under this Agreement were used to acquire the equipment. Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to back to the Grantee for the CDBG-MIT program or (b) retained by the Subrecipient after compensating the Grantee an amount equal to the current fair market value of the equipment less the percentage of any non-CDBG-MIT funds used to acquire the equipment.

- c. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement more than \$25,000 shall be used to meet one of the CDBG-MIT National Objectives pursuant to 24 CFR 570.208. Under §570.503(b)(7), property acquired or improved in whole or in part with CDBG Funds more than \$25,000 that is within the subrecipient's control, the property must either:
 - 1. Be used by the subrecipient to continue to meet one of the program's national objectives for at least 5 years after the expiration of the subrecipient agreement; or,
 - 2. If a national objective is not met during this time period, the Grantee must be reimbursed for the current fair market value, less any portion of the value attributable to non-CDBG funds. This payment is considered program income to the Grantee. No payment is required after the period specified in paragraph 1. above.

The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period.

- d. Change of Use of Real Property- Subrecipient may not change the use or planned use of any real property acquired or improved with CDBG funds in excess of the threshold for small purchase procurement (2 CFR 200.88) without first providing affected citizens with notice of, and opportunity to comment on, any proposed change, and determining either:
 - 1. The new use meets one of the national objectives and is not a building for the general conduct of government; or
 - 2. The new use is deemed appropriate (after consultation with affected citizens) but will not meet a national objective.

If it is determined the new use falls under 2., the Subrecipient must reimburse the Grantee's CDBG-MIT program, at the discretion of the Grantee, in the amount of the current fair market value of the property, less the value attributable to the non-CDBG portion for the acquisition and improvements to the property. The requirements at §570.489(j) assume the property met a national objective before any change in its use. If the CDBG assisted property never met a national objective, the Subrecipient must reimburse the Grantee from non-federal funds. The reimbursed amount is treated as program income and must be spent in accordance with CDBG Program Income requirements.

These requirements apply from the date CDBG-MIT funds are first expended for the property until five years after closeout of the Subrecipient's agreement. If the change in use occurs after grant closeout but within 5 years of such closeout, the Subrecipient must reimburse the Grantee.

F. Documentation and Record Keeping

1. Records to be Maintained.

The Subrecipient shall establish and maintain records sufficient to enable the Grantee to (1) determine whether the Subrecipient has complied with this Agreement, applicable Federal statutes and regulations, and the terms and conditions of the Grantee Department's Federal award and (2) satisfy recordkeeping requirements applicable to the Grantee. These records include the records described in Section III. of this Agreement, Scope of Service.

At a minimum, the Subrecipient shall maintain records required by 24 CFR 570.506, which includes: Records providing a full description of each activity undertaken; Records required to determine the eligibility of activities; Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG-MIT assistance; Records documenting compliance with the fair housing and equal opportunity requirements of the CDBG program regulations; Financial records as required by 24 CFR 570.502, and 2 CFR part 200, including records necessary to demonstrate compliance with all applicable procurement requirements; and other records necessary to document compliance with this Agreement, any other applicable Federal statutes and regulations, and the terms and conditions of Grantee Department's award.

2. Access to Records

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

The Subrecipient shall comply with the retention and access requirements set forth in 24 CFR 570.506. The VIHFA, HUD, the Comptroller General of the United States, and any of their duly authorized representatives or agents, shall have access to, and the right to examine, all records, books, documents, and papers of the VIHFA created under this Agreement for the purpose of audits, examinations, and making excerpts and transcriptions.

The VIHFA shall provide reasonable access to records regarding the past use of CDBG funds in compliance with applicable Territorial and Federal laws and regulations regarding privacy and obligations of confidentiality.

All records, reports, documents, or other material or data, including electronic data, related to this Agreement and/or obtained or prepared by the Subrecipient 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 is the property of VIHFA

3. Record Retention and Transmission of Records to the Grantee

Prior to close out of this Agreement, the Subrecipient must transmit to the Grantee records sufficient for the Grantee to demonstrate that all costs under this Agreement met the requirements of the Federal award. The Subrecipient shall maintain, and require all sub-Subrecipients, borrowers, contractors, and all tiers of subcontractors to maintain:

- a. All Program records required by 24 CFR 570.506 for five (5) years following close-out of the Agreement or the Grant Fund Agreement, as applicable. These records shall include the following as applicable:
 - The executed Agreement.
 - Description, geographic location, and budget of each funded Activity.
 - Eligibility and national objective determinations for each Activity.
 - Property management files.
 - HUD monitoring correspondence.
 - Environmental review and regulatory compliance documents.
 - Documentation of compliance with other federal requirements (e.g., Davis-Bacon, Uniform Relocation Act, and Lead-Based Paint, etc.); and
- b. All Financial records to include:
 - Chart of accounts.
 - Manual on accounting procedures.
 - Accounting journals and ledgers.
 - Source documentation (such as purchase orders, invoices, canceled checks).
 - Procurement files (from solicitation to contract).
 - Status of reimbursements.
 - Bank account records (including revolving loan fund records, if applicable).
 - Draw down requests.
 - Payroll records and reports including timesheets or timecards as applicable.
 - Financial reports.
 - Audit files; and
 - Relevant financial correspondence.
- c. Project/Activity records to include the following documentation:
 - Eligibility of the Activity for Grant Funding.
 - Benefit Cost Analysis (BCA)
 - Evidence of having met a national objective (See 24 CFR 570.482).
 - All State and Federal environmental regulatory review(s) and approval(s)
 - Procurement policy
 - Any cost analysis, RFP(s), evaluation criteria, evaluations, award letters,

notification letters, bids, or contracts.

- Characteristics and locations of the Programs and each Program Activity.
- Compliance with special program requirements, such as coordination and cooperation with any other departments.
- Budget and expenditure information (including draw requests); and
- The status of the Program and each Activity – Monthly Status Reports
- Operations and Maintenance Plans
- Requisite Operating Permits

4. Client Data and Other Sensitive Information

The Subrecipient is required to maintain data demonstrating client eligibility for activities provided under this Agreement. Such data may include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of activities provided. The Subrecipient must comply with 2 CFR §200.303 and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 CFR 200.82, and other information HUD or the Grantee designates as sensitive or the Subrecipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

G. Closeout

The Subrecipient shall closeout its use of the CDBG-MIT funds and its obligations under this Agreement by complying with the closeout procedures in 2 CFR § 200.344. Activities during this close-out period may include, but are not limited to, making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the terms of 2 CFR 200.343, upon the expiration of this Agreement, the Subrecipient shall transfer any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds, further, any real property under the Subrecipient Department's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the Subrecipient in the form of a loan) shall be treated in accordance with 24 CFR 570.503(b)(7).

H. Nondiscrimination

The Subrecipient will comply with the following mandatory provisions and will include these provisions where applicable, in every contract, specifically or by reference, so that such provisions will be binding upon each of its contractors/vendors and ensure the inclusion in all subcontracts.

1. 24 CFR Part 6

- a. The Subrecipient will comply with 24 CFR part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground

of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance.

- b. The Subrecipient will adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504). Section 109 of the HCDA makes these requirements applicable to programs or activities funded in whole or in part with CDBG DR funds. Thus, the Subrecipient shall comply with regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs.
2. Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 et seq.
 - a. The ABA requires access to buildings designed, built, altered, or leased by or on behalf of the federal government or with loans or grants, in whole or in part, from the federal government. As used in the ABA, the term "building" does not include privately owned residential structures not leased by the government for subsidized housing programs.
3. Title 9 of the Education Amendments Act of 1972, 20 U.S.C. 1681 et seq., which prohibits discrimination based on sex in any federally funded education program or activity.
4. Title 11 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 et seq., which prohibits discrimination against people with disabilities by public entities, which includes any state or local government and any of its departments, agencies, or other instrumentalities.
5. Housing for Older Persons Act of 1995 ("110PA") (see 42 U.S.C. 3607), which governs housing developments that qualify as housing for persons aged 55 or older.
6. It shall require that every newly constructed or altered building or facility (other than a privately-owned residential structure, and certain other limited exceptions) complies with any accessibility requirements required by Title III of the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12181 et sec.) and shall be responsible for conducting inspections to ensure compliance with these specifications by any contractor or subcontractor.
7. Other statutory requirements as outlined in the HUD Rider, attached hereto as Appendix B will be required to attach all contracts executed pursuant to this Agreement.
8. Subrecipient hereby agrees to have an annual agency audit conducted in accordance with 2 CFR Part 200, subpart F.
9. Title VI of the Civil Rights Act of 1964 (24 CFR part 1)
 - (i) General Compliance:

The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352), as amended [if the Grantee is subject to 24 CFR part 570, subpart K, insert: "and 24 CFR 570.601 and 570.602". No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this Agreement. The specific nondiscrimination provisions at 24 CFR 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce, or discriminate against any person for the

purpose of interfering with any right or privilege secured by title VI of the Civil Rights Act of 1964 or 24 CFR part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 24 CFR part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 2 CFR part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(ii) Assurances and Real Property Covenants:

As a condition to the approval of this Agreement and the extension of any Federal financial assistance, the Subrecipient assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this part 1. If the Federal financial assistance under this Agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the Subrecipient's assurance herein shall obligate the Subrecipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the Subrecipient for the period during which Federal financial assistance is extended pursuant to the contract or application.

This assurance gives the Grantee and the United States a right to seek judicial enforcement of the assurance and the requirements on real property. In the case of real property, structures or improvements thereon, or interests therein, acquired with Federal financial assistance under this Agreement or acquired with CDBG-MIT funds and provided to the Subrecipient Under this Agreement, the instrument effecting any disposition by the Subrecipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If the Subrecipient receives real property interests or funds or for the acquisition of real property interests under this Agreement, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part 1 shall extend to any facility located wholly or in part in such space.

1. Affirmative Action

- (i) Approved Plan the Subrecipient agrees that it shall carry out pursuant to the Grantee's specifications an Affirmative Action Program in compliance with the President's Executive Order 11246 of September 24, 1966, as amended, and implementing regulations at 42 CFR chapter 60. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program.

The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the release of funds under this Agreement.

- (ii) Women- and Minority-Owned Businesses (W/MBE) [If the Grantee is subject to 2 CFR part 200, subpart D, and more specifically 2 CFR 200.321, insert: " The Subrecipient shall take the affirmative steps listed in 2 CFR 200.321(b)(1) through (5) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible when the Subrecipient procures property or services under this

Agreement.

(iii)Notifications The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(iv)Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement. The Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

I. Insurance & Bonding

The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR §200.326 and §200.310. The Subrecipient (non-Federal entity) must, at a minimum, provide equivalent insurance coverage for real property and equipment acquired or improved with CDBG-MIT funds as provided to property owned by the Subrecipient (non-Federal entity) from loss due to theft, fraud and/or undue physical damage, and acquire a blanket 11 of 24 fidelity bond covering all employees in an amount equal to CDBG-MIT funds provided by the Grantee.

J. Audits, Inspections, and Monitoring

1. Single Audit

The Subrecipient must be audited as required by 2 CFR part 200, subpart F when it is expected that the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements, currently set at \$750,000. Annually, the Subrecipient must provide the Grantee with its Single Audit for the fiscal year.

2. Inspections and Monitoring

The Subrecipient shall permit the Grantee and auditors to have access to the Subrecipient's records and financial statements as necessary for the Grantee to meet the requirements of 2 CFR part200. The Subrecipient must submit to monitoring of its activities by the Grantee as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this Agreement. This review must include: (1) reviewing financial and performance reports required by the Grantee; (2) following-up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from the Grantee detected through audits, on-site reviews, and other means; and (3) issuing a 14 of 24 management decision for audit findings pertaining to this Federal award provided to the Subrecipient from the Grantee as required by 2 CFR§200.521.

4. Corrective Actions

The Grantee may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. The Grantee may require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient

from the pass-through entity detected through audits, on-site reviews, and other means. In response to audit deficiencies or other findings of noncompliance with this Agreement, Grantee may impose additional conditions on the use of the CDBG-MIT funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance.

The Subrecipient shall be subject to reviews and audits by the Grantee, including onsite reviews of the Subrecipient as may be necessary or appropriate to meet the requirements of 4 CFR 570.910.

K. Property Standards

Real property acquired by the Subrecipient under this Agreement shall comply with the Property Standards in 2 CFR 200.310 through 2 CFR 200.316, except to the extent they are inconsistent with 24 CFR 570.200(j) and 24 CFR 570.489(j), in which case Subrecipient shall comply with 24 CFR 570.200(j) and 24 CFR 570.489(j), and except to the extent that proceeds from the sale of equipment are program income and subject to the program income requirements under this Agreement, pursuant to 24 CFR 570.489(e)(1)(ii).

L. Federal Funding Accountability and Transparency Act (FFATA)

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

M. Relocation, Real Property Acquisition, and One-for-one Housing Replacement

The Subrecipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 USC 4601 – 4655, 49 CFR part 24, 24 CFR part 42, and 24 CFR 570.606. In addition to other URA requirements, these regulations (49 CFR § 24.403(d)) implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC § 5181, which provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [URA] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act".

N. Procurement Standards

The Subrecipient must have and use documented procurement procedures, consistent with VI laws and other regulations for the acquisition of property or services required under a Federal award or subaward. The Subrecipient's documented procurement procedures must conform to the procurement standards identified in VIHFA's Procurement Policies and Procedures or utilize their own policy and adopt 2 CFR 200.318 through 2 CFR 200.327 requirements.

1. The Subrecipient shall conduct all procurement transactions in a manner providing for full and open competition and comply with its procurement regulations as certified compliant by

VIHFA's procurement department, including the need for cost analysis in advance of procurements and documentation of free and open competition. Additionally, the Subrecipient is required to comply with all applicable Territory laws that may apply to its procurement transactions.

2. Upon request, the Subrecipient shall provide the Grantee with copies of its documentation concerning the selection process for contractors/sub-Subrecipient s, contracts, subcontracts, and job descriptions, prior to selection and/or execution.
3. Utilization of Small, Minority and Women's Owned Enterprises.

The Subrecipient and its contractors must use their best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632) and "minority and women's business enterprise" means a business at least fifty- one (51) percent owned and controlled by minority group members or women. The Subrecipient shall also ensure similar requirements are provided in its contracts utilizing CDBG-MIT Funds, etc.

4. Sole Source Procurement.

The Subrecipient shall make all reasonable efforts to avoid sole source contracts but when no reasonable, feasible, or cost-effective alternative exists, the Subrecipient shall specifically identify all awards of sole source contracts and the rationale or justification for making the award on a sole source basis in reports to the Grantee Department.

5. The Subrecipient is prohibited from entering into cost-plus a percentage of cost and percentage of construction costs contracts.
6. Procurement and Contractor Oversight

The Subrecipient shall impose the Subrecipient Department's obligations under this Agreement on its contractors, specifically or by reference, so that such obligations will be binding upon each of its contractors. The Subrecipient must comply with CDBG regulations regarding debarred or suspended entities at 24 CFR 570.489(l). CDBG funds may not be provided to excluded or disqualified persons. The Subrecipient shall maintain oversight of all activities under this Agreement and shall ensure that for any procured contract or agreement, its contractors perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this Agreement.

O. Labor and Employment

1. Labor Standards

The Subrecipient shall comply with the in-labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended and ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Agreement shall be paid wages at rates not less than

those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis- Bacon Act, as amended (40 U.S.C. 3141, et seq.), and 29 CFR part 1, 3, 5, 6, and 7, provided, that this requirement shall apply to the rehabilitation of residential property only if such property contains not less than 8 units. The Subrecipient agrees to comply with the Copeland Anti- Kick Back Act (18 U.S.C. 874) and its implementing regulations of the U.S. Department of Labor at 29 CFR part 3 and part 5. The Subrecipient shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient shall also comply with all labor laws (as referenced under 24 CFR 570.603) and make efforts to hire, procure, when possible, minority- or women-owned business enterprises in accordance with Section 8 of the Small Business Act, 15 U.S.C. § 637, as amended.

P. Section 3 of the Housing and Urban Development Act of 1968

The Subrecipient shall comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u, and its implementing regulations at 24 CFR part 135. The Subrecipient shall include the “Section 3 clause” at 24 CFR 135.38 in every “Section 3 covered contract” (as defined in 24 CFR 135.5).

All Contracts executed pursuant to this Agreement shall be subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 as amended, 12 U.S.C., 17010. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

Q. Conduct

1. Hatch Act

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

2. Conflict of Interest

The Subrecipient’s designees, agents, members, officers, employees, consultants, and other public official who exercises or who has exercised any functions or responsibilities with respect to the Program/Project during his or her tenure, or who is in a position to participate in a decision-making process or gain inside information with regard to the Project, are barred from any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the Program/Project or in any activity, or benefit there from, which is part of this Agreement at any time during or after such person’s tenure.

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

interest provisions in 24 CFR 570.489(h).

3. Lobbying Certification

The Subrecipient hereby certifies that:

- (i) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- (ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- (iii) It shall require that the language of paragraph (a) through (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose; accordingly, and
- (iv) (This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is required by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

R. Religious Activities

Faith-based organizations are eligible for HUD funding on an equal footing with any other organization and retain its independence from federal, state, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HUD funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. However, an organization that is awarded direct HUD funds may still engage in inherently religious activities providing they are voluntary for participants in HUD-funded activities and occur separately in time or location from the HUD funded activities. Faith-based organizations, like all organizations implementing HUD-funded programs, must serve all eligible beneficiaries without regard to religion.

Faith-based organizations, like other organizations, may receive HUD funds to acquire, construct, or rehabilitate buildings and other real property as long as the funds only pay the costs attributable to HUD eligible activities.

S. Environmental Conditions

1. Prohibition on Choice Limiting Activities Prior to Environmental Review

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

2. Air and Water

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

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

3. Flood Disaster Protection

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

4. Lead-Based Paint

The Grantee and Subrecipient shall follow the Grantee's procedures with respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851- 4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title. These provisions are attached to this Agreement in Appendix D.

5. Historic Preservation

The Subrecipient shall comply with the Historic Preservation requirements set forth in the National

Historic Preservation Act of 1966, as amended, codified in title 54 of the United States Code, and the procedures set forth in 36 CFR part 800 insofar as they apply to the performance of this Agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

XII. OTHER REQUIREMENTS IMPOSED BY THE VIRGIN ISLANDS HOUSING FINANCE AUTHORITY

A. SPECIFIC CONDITIONS

1. General

VIHFA has determined specific risks associated with this grant and therefore has set forth additional grant terms and conditions for this subrecipient. These Specific Conditions are incorporated into, this Agreement. The Special Conditions may add, delete, or modify the overall Agreement. By signing the Agreement, the VIDPW agrees to these special conditions for the receipt of CDBG-MIT funds, which may be amended from time to time. In the event of an inconsistency, these Special Conditions shall take precedence over the terms and conditions of this Agreement to the extent of that inconsistency.

2. Authority to Use Grant Funds (Release of Funds)

- A. No costs shall be incurred/disbursed until after VIDPW has received a written Notice to Proceed from VIHFA that VIDPW has satisfied the specific requirements listed herein for the release of CDBG-MIT funds.
- B. VIDPW shall meet the required Specific Conditions contained within the Authority to Use Grant Funds from HUD under 24 CFR Part 58.
- C. Grant funds must be used for its intended purposes. Costs incurred shall only be as necessary and allowable to carry out the purposes and activities of the approved projects and may not exceed the maximum limits set in the approved budget. Grant recipients must account for costs and expenditures. Grant funds cannot be used to pay late fees, penalties, and any loan obligations, including debt service payments.
- D. In the event that the VIHFA or HUD determines that any funds were expended by the Subrecipient for unauthorized or ineligible purposes, or the expenditures constitute disallowed costs in any other way, then VIHFA or HUD may, after giving the Authority thirty (30) days to respond, order repayment of the same.
- E. The Subrecipient shall remit the disallowed amount to VIHFA within thirty (30) business days of written notice of the disallowance.

- F. Submit an annual Audit Certification form to VIHFA. The form will be provided by VIHFA.
- G. Subrecipient shall attend and participate in HUD Office of the Inspector General (OIG) trainings.

3. Other Special Conditions in accordance with CDBG-MIT are as follows:

A. Subrecipient Management Risk

To address the risk caused by the financial condition of the VIPDW, a CDBG-MIT subrecipient of the Grantee, the Grantee will issue all payments directly to the vendor on the Subrecipient's behalf.

B. Professional Standards

The Subrecipient shall ensure its Contractor/Subcontractor will complete all work in a substantial and workmanlike manner according to standards and practices in the Contractor's/Subcontractor's trade and the work shall conform to all applicable building codes or other codes and regulations which apply to the work to be performed whether covered by the specifications and drawings for the work, including any Contractor/Subcontractor registration requirements. Contractor/Subcontractor shall warrant that the final product of contractor's/subcontractor's work shall be fit for the purposes for which it is intended. Contractor/Subcontractor shall warrant against defects in materials and labor for a period of one (1) year from the date of completion and upon acceptance of the work by the Subrecipient.

C. Defective Work

The inspection of work shall not relieve the Contractor/Subcontractor of any of its obligations to fulfill the terms and conditions of the Contract as herein prescribed. Defective work shall be made good, and unsuitable materials shall be rejected, notwithstanding that such work and materials have been previously overlooked by the Subrecipient and accepted or paid for. If the work or any part thereof shall be found defective at any time before the final acceptance of the whole work, or the final payment therefore, the Subrecipient shall ensure that the Contractor shall forthwith make good such defect in a manner satisfactory to the Subrecipient and the Grantee. The Contractor/Subcontractor shall replace, at its own expense, damaged or unsuitable materials with new material of satisfactory quality.

D. Right to Withhold

If the Work under any Contract, funded through this Agreement, is not performed in accordance with the terms hereof, the Grantee reserves the right to withhold out of any payment due to the Contractor/Subcontractor, such amount as may be deemed ample to protect the VIHFA against loss or to assure payment of claims arising there from, and, at their option, the Subrecipient and the Grantee may apply such sum(s) in such a manner as may be deemed proper to secure their interest or to satisfy such claims. The Contractor/Subcontractor shall be immediately notified in writing if the Subrecipient and the Grantee elect to exercise their right to withhold any amount due to unsatisfactory performance. No such withholding or application shall be made if and while the Contractor gives

satisfactory assurance to the Parties that such claims will be paid by the Contractor's insurance carrier, if applicable, if such claim is not successful.

E. Insurance

As part of VIHFA, the Subrecipient carries sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage. If this was to change and/or cease, the Subrecipient at a minimum shall purchase a blanket fidelity bond, or equivalent insurance acceptable to the VIHFA.

F. Indemnity

The subrecipient shall indemnify, defend, and hold the Grantee, its property, Board of Directors, agents, employees, consultants, and the funding agency harmless from and against all claims, losses, demands, actions, expenses, and damages, direct, indirect, or consequential, arising out of or resulting from the performance of the Work, or otherwise caused in whole or in part by negligent act or omission of the subrecipient, its sub-awardees, any person organization directly or indirectly employed by them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of the negligence of such party.

G. Liquidated Damages

The Subrecipient is expected to assess Liquidated Damages against the Contractor/Subcontractor for scope of work not completed under the terms set forth in any Contract, liquidated damages shall be assessed pursuant to its procurement policies. Liquidated damages shall first be deducted from any contract monies due but not yet paid, to the extent available.

H. Federal Labor Standards Provision (DAVIS BACON ACT)

All laborers and mechanics employed on the Project covered by this contract shall be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the **Davis Bacon Act**, as amended (40 U. S. 276a- 276a-5) and shall receive overtime compensation in accordance with, and subject to the provisions of the Contract Work Hours and Safety Standards Act 940 U. S. C. 327332). The Contractors and all its sub-contractors shall comply with regulations issued pursuant to the labor standards provisions.

For the duration of this Contract, the Subrecipient shall ensure its Contractor and Subcontractors submit copies of weekly payroll forms and cancelled checks to both the Subrecipient, or a designated Labor Standards Coordinator/Compliance Specialist.

I. No Personal Liability of Individual Representatives

No covenant or representation contained in this Agreement shall be deemed to be the covenant or agreement of any official, trustee, officer, agent, or employee of either Party in his or her individual

capacity, and neither the officers of either 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. This clause does not apply to unlawful actions (i.e., fraud) outside of the scope of his/her/they employment/reasonableness.

J. Prohibited Activity / Fund Use

The Subrecipient is prohibited from using, and shall require that its Contractors and Subcontractors, if any, are prohibited from using, the CDBG-MIT Funds to be provided herein or personnel employed in the administration of the project for political activities, inherently religious activities, lobbying, political patronage, nepotism activities, and supporting either directly or indirectly the enactment, repeal, modification or adoption of any law, regulation or policy at any level of government. The Subrecipient will comply with the provision of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of certain employees.

The Subrecipient must ensure that its Contractors and Subcontractors seeking reimbursement have complied with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and that they will not and have not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. The Subrecipient's Contractors and Subcontractors must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

K. Contractors / Subcontractors/Consultants

The Subrecipient may enter into contracts with third parties for the performance of any part of its duties and obligations in implementing the Projects described in this Agreement. In no event shall the existence of such a contract operate to release or reduce the liability of the Subrecipient for any breach in its performance or any Contractor's/Subcontractor's duties. Additionally, all contracts that the Subrecipient enters into with Contractors/Subcontractors/Consultants shall be deliverable based contracts.

L. Applicability of Provisions Included/Excluded From the Agreement

Failure to expressly reference any applicable federal or State regulation, statute, public law, Executive Order, agency directive or OMB Circular will not exempt either Party from compliance with such applicable law or regulation, and all applicable provisions not included will be deemed as inserted herein.

Likewise, execution of this Agreement will not obligate either Party to comply with any regulation, statute, public law, Executive Order, agency directive or OMB Circular, if not otherwise applicable to the use of the CDBG-MIT funds provided herein or to the projects performed under this Agreement, even though it may be referenced in this Agreement or in the Appendices.

M. Subrogation & Assignment

If the Subrecipient receives funds from the CDBG-MIT Program and whether, before, during or after Project initiation, funds from other sources are provided to the Subrecipient for all activities of the projects under this Agreement resulting in a potential duplication of benefits regarding the Project funds, the Subrecipient agrees to notify the Grantee regarding such potential duplication. As provided in this Agreement in Section X (B) (Section 312 of the Stafford Act), the Subrecipient agrees to reimburse the Grantee if it later receives other disaster assistance for the same purposes as under this Agreement.

N. No Third-Party Beneficiary

Nothing herein is intended, and nothing herein may be deemed to create or confer any right, action, or benefit in, to, or on the part of any person not a party to this Agreement. This provision shall not limit any obligation which either Party has to HUD in connection with the use of CDBG-MIT funds, including the obligations to provide access to records and cooperate with audits as provided in this Agreement.

O. No Assignment

Neither Party may transfer or assign this Agreement or transfer or assign any of its rights or assign any of its duties under the Agreement without the express prior written consent of the other Party. However, if the Parties mutually agree to an assignment, all rights and obligations set forth herein shall ensure to the benefit of the Parties and to their respective successors and assigns.

P. Copyright

No materials, including but not limited to reports, maps, documents, or plans produced as a result of this Agreement, in whole or in part, shall be available for copyright purposes to any other person. Any such material produced as a result of this Agreement that might be subject to copyright is the property of and all rights shall belong to the Parties unless the Parties agree otherwise in writing.

Software and other materials owned by the Subrecipient or a third party prior to the date of this Agreement and not related to this Agreement shall be and remain the property of the Subrecipient or third party.

The Parties will, where either Party believes necessary, provide information to undertake their responsibilities described herein. All records, reports, documents, and other materials delivered or transmitted shall remain the property of the transmitting Party and shall be returned, upon request, at termination, expiration or suspension of this Agreement.

Q. Delay or Omission

No delay or omission in the exercise or enforcement of any right or remedy accruing to either 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 or 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.

R. 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 provision 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.

S. Guidance

4. Notices

Any notice required to be given under, or in connection with this Agreement, shall be in writing and shall be hand-delivered, mailed, emailed or facsimiled. All such communications shall be transmitted to the address or numbers set forth below, or such other address or numbers as may be hereafter designated by either Party in written notice to the other Party compliant with this Section.

To the GRANTEE (VIHFA):

| | |
|------------------|---|
| Attn: | Dayna Clendinen Chief Operating Officer/Chief Disaster Recovery Officer CDBG-MIT Program |
| Mailing Address: | 3202 Demarara Plaza Suite 200 St. Thomas, VI 00802 |
| E-mail: | dclendinen@vihfa.gov |
| Phone: | (340) 774-4432, ext. 4270 |

To the SUBRECIPIENT:

| | |
|------------------|--|
| Attn: | Derek Gabriel Commissioner |
| Mailing Address: | 8244 Subbase St. Thomas, VI 00802 |
| E-mail: | Derek.gabriel@dpw.vi.gov |
| Phone: | (340) 776-4844 |

5. Governing Law and Venue

This Agreement shall be governed by and construed in accordance with all applicable Federal and Territorial laws. Any legal action resulting from the implementation of this Agreement shall be brought and adjudicated in the U.S. Virgin Islands.

This Agreement and any amendments, exhibits or other formally incorporated documents constitutes

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

6. Entire Agreement

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

7. Binding Effect

All the terms, conditions, and covenants to be observed and performed by the Parties shall be applicable to, and binding upon, their successors and/or assigns.

IN WITNESS WHEREOF: the parties hereto have hereunto set their hands and seals on the day and year first written above.

WITNESSES:

(1) 
(2) 

BY:

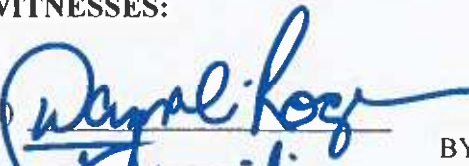

**VIRGIN ISLANDS DEPARTMENT OF
PUBLIC WORKS, SUBRECIPIENT**


**Derek Gabriel
Commissioner**

DATE:

4/7/25

WITNESSES:

(1) 
(2) 



BY:

**VIRGIN ISLANDS HOUSING FINANCE
AUTHORITY, SUBRECIPIENT
DEPARTMENT: CDBG-MIT**


**Dayna Glendinen
Chief Operating Officer/Chief Disaster
Recovery Officer**

DATE: 4/16/2025

WITNESSES:

(1) 
(2) 

BY:

**VIRGIN ISLANDS HOUSING FINANCE
AUTHORITY,
GRANTEE:**


**Eugene Jones, Jr.
Executive Director**

DATE:

4/22/2025

REVIEWED AND APPROVED FOR LEGAL SUFFICIENCY

 Special Counsel
Name and Title

April 1, 2025
Date

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EXHIBIT A

SCOPE OF SERVICES

The Subrecipient shall complete the following tasks for the proposed improvements to mitigate a main corridor of the St. Thomas highway system and related project activities that follows. These are summarized scope of the full scope of Schedule A and Schedule B of the Veterans Drive Mitigation Improvement Phase 2 Project.

Project Location: Veterans Drive (Route 30), Charlotte Amalie Waterfront, St. Thomas, Virgin Islands

Objective: The overarching goal of this initiative is to significantly improve traffic flow, bolster safety measures, and enhance pedestrian accessibility along Veterans Drive, all while elevating the visual and functional aesthetics of the Charlotte Amalie waterfront corridor, a vital artery of the region.

Project Description:

The Subrecipient is tasked with executing the Veterans Drive Improvement Project, a comprehensive effort designed to transform traffic conditions, safety protocols, and pedestrian experiences along the bustling Charlotte Amalie waterfront. This transformative project encompasses several key components. The roadway design will feature a modernized 4-lane configuration complemented by an 11-foot-wide raised median, intended to streamline vehicular movement and reduce congestion. Pedestrian and aesthetic enhancements will include a thoughtfully designed 4-foot landscaped buffer to separate foot traffic from vehicles, alongside a generous 26-foot-wide promenade that expands to between 30 and 50 feet in the segment between Palm Passage and Tolbod Gade, where a striking double row of trees will enhance both shade and beauty.

The construction approach is equally innovative, involving the strategic placement of a new seawall and an average 50-foot-wide fill section extending into the harbor. To minimize disruption to land-based operations and preserve the functionality of the waterfront, the majority of this work will be conducted from the harbor itself, utilizing barge access carefully planned to steer clear of cruise ship zones and private mooring areas. The project pursues multiple interconnected goals: alleviating persistent traffic congestion, increasing the roadway's capacity to handle higher volumes of vehicles, enhancing safety and mobility for both motorists and pedestrians, and ultimately improving the waterfront's aesthetic appeal to create a more inviting and functional public space.

Tasks and Activities

Task 1: Environmental Review, Clearance, Permitting, and SRA Execution

Activity 1.1:

The Subrecipient will undertake a meticulous process to prepare and coordinate all necessary documentation to satisfy the Environmental Review Special Conditions as outlined in 24 CFR Part 58, ensuring seamless submission to the Virgin Islands Housing Finance Authority (VIHFA). This critical step ensures that no payments or reimbursements are processed until the U.S. Department of Housing and Urban Development (HUD) issues the Authorization for Use of Grant Funds (AUGF), safeguarding compliance with federal oversight. The Subrecipient will contract specialized services to adhere to all pertinent laws and regulations, addressing environmental considerations such as the careful removal or relocation of coral and sea grass, minimizing acoustic impacts, protecting endangered species, and implementing robust water quality monitoring alongside sedimentation and erosion control plans. Throughout the construction phase, the Subrecipient will diligently monitor environmental conditions—including protected species, water quality, and the benthic community—taking swift corrective action if any degradation is detected. Additionally, the Subrecipient will facilitate the transfer of all required permits into its name, bearing the associated costs as detailed in Exhibit H, to ensure uninterrupted project progression.

Deliverable: A fully completed environmental review package, accompanied by all permits successfully transferred into the Subrecipient's name.

Task 2: Solicitation, Awards, and Contracts

Activity 2.1:

The Subrecipient will assume responsibility for managing and overseeing a network of vendors, contractors, and service providers, ensuring that all deliverables align precisely with the stringent requirements for federal reimbursement. This task involves diligent coordination to secure contracts that reflect agreed-upon scopes of work, fostering accountability and transparency throughout the procurement process.

Deliverable: Fully executed contracts that are directly tied to the specified scopes and deliverables, ready for implementation.

Task 3: Control of Work, Materials, and Contractor Quality Control

Activity 3.1:

The Subrecipient shall exercise rigorous oversight over the scope of work, construction site operations, materials selection, and quality control measures, incorporating baseline schedules that account for predictable weather patterns to minimize delays. This includes ensuring the accuracy, completeness, and contractual compliance of all work performed, with any deviations from approved drawings requiring prior approval. The facility will be constructed to meet current highway design standards, featuring a suite of improvements such as roadway excavation, embankment construction,

aggregate base installation, asphalt pavement milling, and the application of hot asphalt concrete pavement. Additional elements include reinforced concrete pavement, curbs, gutters, and sidewalks crafted from concrete, brick, or cobblestone, as well as precast modular block retaining walls. The project will also encompass drainage systems, utility adjustments or replacements (covering water, telephone, sewer, power, and irrigation), traffic signals, and street lighting. Safety and mobility will be enhanced through wider lanes, a central median, and continuous sidewalks on both sides of the roadway, creating a safer and more accessible environment for all users.

Deliverable: A fully completed roadway that adheres to modern design standards and achieves the project's safety and mobility objectives.

Task 4: Locating Utilities

Activity 4.1:

The Subrecipient will meticulously locate and mark all existing utilities, providing advance notification of at least 48 hours to relevant utility companies—such as Innovative Telephone, Innovative Cable TV, the Water & Power Authority, and Waste Management—prior to any excavation activities. Advanced geophysical techniques, including electromagnetic and sonic methods, will be employed alongside careful hand tools or air-vacuum excavation methods to minimize disturbance to existing infrastructure. Detailed records of each utility's size, material, function, and elevation will be documented, with field sketches submitted to the Contracting Officer (CO) within 24 hours of discovery. Utility locations will be clearly marked with flags or paint, and these markings will be maintained throughout the project duration. Any excavated areas will be backfilled and restored using approved materials and compaction techniques to ensure long-term stability.

Deliverable: Comprehensive utility documentation and fully restored excavation sites, ensuring operational continuity.

Task 5: Public Traffic Controls (Temporary and Permanent)

Activity 5.1:

The Subrecipient shall manage traffic flow in accordance with the Manual on Uniform Traffic Control Devices (MUTCD), the contract-specific traffic control plan, and Section 635, prioritizing minimal disruption while ensuring safety for pedestrians, cyclists, motorists, and emergency services. Should adjustments be necessary, alternate traffic control plans be submitted, incorporating temporary devices such as signs, pavement markings, cones, barriers, and flaggers as needed. Permanent traffic signal systems will be designed and installed in compliance with Federal Department of Transportation standards (as adopted by the Virgin Islands Department of Public Works) and the National Bureau of Standards Handbook 81, ensuring long-term reliability and efficiency.

Deliverable: A safe, efficient, and well-coordinated traffic management system sustained throughout the construction period.

Task 6: Invoicing

Activity 6.1:

The Subrecipient will prepare and submit payment requests through VIHFA's Financial Management System, providing accurate banking information and completing vendor setup processes. Invoices will be accompanied by detailed supporting documentation that meets VIHFA's stringent requirements, with no payments permitted for indirect costs or unapproved work. All costs must be incurred and work completed prior to submitting reimbursement requests, ensuring fiscal accountability.

Deliverable: A thoroughly reviewed and complete payment invoice package submitted to VIHFA for processing.

Task 7: Reporting

Activity 7.1:

The Subrecipient will submit detailed monthly status reports to the EM Grants Management Portal by the 20th of each month, outlining progress on all tasks, key milestones achieved, any deficiencies encountered, and corrective actions taken to address them.

Activity 7.2:

Weekly certified payrolls and monthly Section 3 reports will be collected and submitted alongside the monthly status report, ensuring compliance with labor and economic opportunity requirements.

Activity 7.3:

Annually, by September 1st, the Subrecipient will provide comprehensive Operation & Maintenance (O&M) Plans, detailing funding strategies and resources allocated for the ongoing maintenance of the completed facility.

Deliverable: Timely monthly status reports and well-prepared annual O&M plans, reflecting project accountability and sustainability.

Task 8: Closeout

Activity 8.1:

Upon final completion of the project, the Subrecipient will compile and submit all required documentation to facilitate project and agreement closeout, adhering to VIHFA's specified requirements and ensuring a smooth conclusion to the initiative.

Deliverable: A comprehensive Agreement Closeout Binder, encapsulating all necessary records and certifications.

General Responsibilities

The Subrecipient commits to upholding full compliance with all applicable federal, state, and local laws, as well as specific grant requirements, throughout the project's duration. This includes coordinating services effectively and facilitating the timely transfer of documentation to maintain collaboration with stakeholders and ensure uninterrupted access to federal funding. As the project unfolds, work plans will be refined to adapt to evolving needs, with barge access routes carefully designed to avoid disruptions to harbor operations, preserving the waterfront's economic and recreational vitality.

See Table of Schedule A.

A. Exhibit A - Summary Table:

| Task | Key Activity | Performance Goal | Key Performance Indicators | Source Verification | Estimated Start / End Dates |
|--|--|---|---|---|--|
| 1. Completion of the Environmental Review and Clearance and Conditions of the Environmental Mitigants | | | | | |
| | Satisfy and supply all deliverables in the Special Conditions including the Environmental Mitigation Measures Conditions derived from the NEPA Review. | Furnish, by the due dates, all the documentation to show completion of the Special Conditions of this Agreement. | Demonstration that Special Conditions were performed. | Copy of the CZM Permit, Copy of the USACE Permit | On or before 7/1/2025 and before any construction activities begins. |
| 2. Special Conditions for Policies and Site Control | | | | | |
| | Furnish a compliant Grant Management Policy. | Furnish a fully a policy per the special conditions | Demonstration of a fully executed agreement that is compliant with grant. | VIDPWs signed policy. | On or before 7/1/2025 |
| | Furnish a compliant Accounting and Finance Policy | Furnish a fully a policy per the special conditions | Demonstration of a fully executed agreement that is compliant with grant. | VIDPWs signed policy. | On or before 7/1/2025 |
| | Furnish a compliant Fraud Waste and Abuse Policy | Furnish a fully a policy per the special conditions | Demonstration of a fully executed agreement that is compliant with grant. | VIDPWs signed policy. | On or before 7/1/2025 |
| | Furnish all Memorandum of Understanding and Contractual Agreements with VI Water and Power Authority, the Public Works, Waste Management and other utilities affected by the Project activities. | Satisfy that the Subrecipient has coordinated work with other affected utilities and service providers. | Demonstration of a fully executed agreement that is compliant with grant. | Submission of a perfected payment request that can be processed by Grantee. | On or before 7/1/2025 |
| 3. Complete proposed project activities that complies with all local, federal and state regulations | | | | | |
| | Manage site control, | Furnish for review and approval all contracts, project agreements and time schedules showing that project activities are on track and being measured. | Demonstration that key milestones are met, and deliverables are within the project activities | All contractual agreements, change orders and decisions that affect the proposed project controls and completion. | As executed and amended. |
| 4. Long Term Operation & Maintenance and Strategic Plans | | | | | |
| | Furnish a Certified Operation and Maintenance Plan for the funded project useful life. | Satisfy that the Subrecipient has a developed strategy to maintain the project useful life. | Supply annual plan for the funded projects. | Submit the executed O&M plan with sufficient data on progress and costs and expenditures needed. | Annually, on or before - September 15 th Starting 2025 through 2029 |
| 5. Payments Reimbursement Documentation | | | | | |
| | Furnish complete Payment Requests for reimbursement. | Complete and submit compliant payment documentation that supports each Payment. | Demonstrate compliance with grant's payment policy. | Submission of a perfected payment request that can be processed by Grantee. | TBD |

EXHIBIT B:
PROJECT DELIVERABLES: KEY ACTIVITIES, TIMELINESS,
PERFORMANCE GOALS, AND BUDGET

1. **Project Name:** Veterans Drive Mitigation Project Phase 2
2. **Project Award Amount:** \$124,400,000.00
3. **Period of Performance:** April 2, 2025 and end April 30, 2029
4. **Project Locations:** Latitude 18.340317° N, Longitude: 64.5746° W.
5. **Project Service Areas:** Area Benefit - St. Thomas and by extension St. John
6. **Project Target Area:** Area Benefit - St. Thomas
7. **National Objectives:** All activities funded with CDBG-MIT funds must meet the criteria for one of the CDBG program's National Objectives.

Both Parties certifies that all activities carried out under this Agreement shall meet the following National Objective(s) and satisfy the following criteria:

Low to Moderate Income Area Benefit Activity.

8. **Project Summary:** The Project activities will increase resilience to disasters and reduce the long-term risk of loss of life, injury, damage to and loss of property, by providing the following. Stormwater improvements that will reduce peak stormwater flow and minimize erosion and pollution through best management practices. Modern drainage infrastructure that exceeds design standards to reduce current and future flooding risks. Hardened sea wall infrastructure that will improve the resiliency of the roadway and waterfront corridor.
9. This project is consistent with the Mitigation Needs Assessment as it proposes improvements that will mitigate the most high-impact hazards to transportation lifelines. Veterans Drive is a crucial component of the tsunami evacuation route network, as it provides access to numerous evacuations routes. This project supports the Mitigation Action Plan's prioritization of projects that will harden public infrastructure and mitigate risks to public health and safety.

Under this project scope VIDPW plans to implement a series of transportation infrastructure and pedestrian improvements along the Island of St. Thomas' primary east-to-west highway, Veterans Drive (Route 30), in the capital city of Charlotte Amalie, to increase the resilience and reliability of the transportation system during and following hurricanes and other disaster events to mitigate risks of loss of life and injury. These mitigation investments are part of the more

prominent Charlotte Amalie Waterfront Revitalization Project. The Phase II Veterans Drive (Route 30) Project includes a suite of transportation improvements that will rebuild the city of Charlotte Amalie's bayside transportation facilities to alleviate localized street flooding as well as enhance a sense of place. The Project will increase the resiliency of the waterfront district's critical roadway, Veterans Drive, by increasing roadway capacity and reducing congestion; improving access to evacuation routes, transportation facilities, and community lifelines; improving stormwater and drainage infrastructure; hardening retaining wall infrastructure; and enhancing pedestrian walkways which will better enable Low- and Moderate- Income (LMI) residents to access community lifelines during major storm events.

10. **Term of Agreement:** The term of this Agreement is **April 2, 2025**, through **April 30, 2029**, and may be extended pursuant to a written amendment to this Agreement as authorized.
11. **Key Activities, Timeliness & Performance:** The Subrecipient shall complete the activities required under this Agreement in accordance with the following timeframes and performance goals associated with each of the activities. See further breakout in Exhibit H.

Key Performance Measures

- Percentage of Completion of Project Activities – VIDPW shall provide, in the monthly status report, the percentage of completion for all project activities. This data shall reflect the overall completion of the entire Phase 2 mitigation project, without separating individual project schedules.
- Linear Feet of Completed Roadway Improvements – VIDPW shall provide statistical data, on a monthly basis, indicating the linear feet of completed roadway improvements.
- Percentage of Expenditures – VIDPW shall provide, in the monthly status reports, statistical data reflecting the percentage of expenditures relative to the project budget, as outlined in Section V.B. “Quarterly Reporting.

Key Timelines, Milestones:

| Activity Start Date | Milestone |
|---------------------|---|
| 2025 Q2 (Apr-Jun) | Solicitation and Selection of Contractor |
| 2025 Q3 (Jul-Sep) | Issuance of Notice to Proceed |
| 2025 Q3 (Jul-Sep) | Construction work in progress |
| 2027 Q3 (Jul-Sep) | Final Inspection and / or Close out |
| 2027 Q4 (Oct-Dec) | Finalization of Contracts/Release of Liens/ Labor Compliance Releases |

B. Notices to Proceed (NTP) will be issued at the following project progress stages. There will be six (6) types of Notices to Proceed that will be issued for this project activities.

- **NTP 1 Solicitation Processes for Each Respective Schedule** will allow VIDPW to proceed with its solicitation of Schedule A project activities. This includes the procurement packages to obtain bids for work. Prior to VIDPW will submit to VIHFA for its review and approval all packages that will be published. VIHFA must review these for compliance with the current regulatory requirements under the federal funding. Once approved, VIHFA will publish these packages on its procurement portal. These will be broken out into five phases.

Expectations and Deliverables:

- VIDPW shall submit its full package to VIHFA review and concurrence prior to posting these on any media.
 - VIHFA must review all solicitation materials before they are published.
 - VIHFA will issue an NTP to authorize VIDPW to start the solicitation process.
 - VIHFA will co-publish the full notice on its website alongside DPW.
 - This is a federal procurement. Solicitation will be posted of FedBizOps.
-
- **NTP2 - Award of Bids and Begin Drafting of Contractual Agreements** will allow VIDPW to issue its award letter to winning respondents that have supplied winning bids to its procurements/solicitations and begin drafting contractual agreements with winning respondents. This NTP will be issued with the name of the entity(ies) being awarded. Per each winning bid, VIDPW will supply to VIHFA all evaluation committee rating cards, the scoring of each member of the evaluation committee and a signed recommendation letter from the VIDPW Commissioner's that recommends proceeding with the award decision. VIDPW cannot finalize and execute the contract until VIHFA reviews and approves the terms. After VIHFA approves the final draft, it will issue NTP #4 to authorize contract execution. VIHFA will issue an NTP to allow VIDPW to.

Expectations and Deliverables:

- VIDPW shall demonstrate by documentation the process used to award respondents. This is to ensure that the award was based on free and open competition and that the award complies with VIDPW's procurement process.
 - VIDPW shall supply its Evaluation Committee's official evaluation, ratings, and the Commissioner's signed recommendation for every award decision.
 - VIDPW may invite VIHFA to observe the bid evaluation process as a non-voting participant, keeping VIHFA informed without influencing the award decision.
 - VIHFA will issue a NTP 2 with the following naming convention, NTP 2 – "Name of the Awarded Entity(ies)."
 - VIDPW must receive a respective NTP 2 before it begins any contractual proceedings with the awarded entities.
-
- **NTP3: Contractual Executions** will allow VIDPW to execute the approved drafts of the

contractual agreements that were procured for the project activities. Once VIHFA has reviewed and approves the final draft it will issue the NTP 4 to VIDPW. VIDPW will supply the fully executed documents to VIHFA that will be published on its Procurement webpage. It is also expected that VIDPW shall publish all executed contracts on its website as well as allowing transparency on the use of funds to the viewing public.

Expectations and Deliverables:

- VIHFA will issue an NTP to permit VIDPW to execute the approved contract.
 - VIDPW shall provide the complete contract to VIHFA for publication on its website.
 - VIDPW is also required to publish the contract on its procurement website and provide proof that the contract was published.
- **NTP4: Change Orders** will allow VIDPW to negotiate change orders in current contracts. VIDPW must supply the rationale and demonstrate prudent cost reasonableness analysis to support any change orders to any procurement. These must be delivered to VIHFA at a minimum thirty (30) business days before any executed agreement is to be signed or allowed.

NOTE: Pursuant to 24 CFR 58, any change in project scope, project activity, or project budget will trigger an environmental review. This review is necessary to ensure compliance with all applicable federal laws and authorities. VIDPW must notify VIHFA in writing of changes or revisions to these categories so that it can conduct an environmental review to assess the potential impacts of the changes on the environment; document all findings and determinations in an Environmental Review Record (ERR), provide opportunities for public participation and comment during the review process and submit an amendment to the project application and obtain HUD approval for any changes.

Failure to comply with these requirements may result in delays, funding withdrawal, or other penalties as determined by HUD.

Expectations and Deliverables:

- VIDPW must submit any change orders to VIHFA for review and concurrence prior to execution or permission. This change order must be reviewed with the whole contract. Since the allocated budget will not be amended, VIDPW will be asked to provide its plan to address any cost overruns to the budget.
 - VIHFA will issue an NTP once the change orders are reviewed and approved.
- **NTP5 - Post-Contractual Agreement, Recapture, or Dismissals (Non-Financial Agreements Operational)** – will allow VIDPW to amend contractual agreements that are in place. This would include recapture, change orders, dismissals and operational contractual agreements.

Expectations and Deliverables:

- VIDPW must submit its plans to terminate agreements or revise agreements to VIHFA for review before taking action.
- VIHFA will issue an NTP after contractual agreements are reviewed and approved.

- VIHFA will not execute any NTP that will extend the total allocated funds of the project.
 - Upon review and approval, VIHFA will issue an NTP to confirm agreement with VIDPW's decision.
- **NTP6 - Memorandums of Understanding and Other Contractual Agreements** will allow VIDPW to complete its non-financial contracts with non-expenditure agencies. While these entities will not receive financial expenditures from the CDBG-MIT grant funds, VIHFA will review the documentation for scope and terms that affect the overall project activities.

Expectations and Deliverables:

- VIHFA must review all Memorandums of Understanding (MOUs) and other contractual agreements before execution.
- VIDPW will submit all project-related agreements—such as those with local utilities (e.g., the Virgin Islands Water and Power Authority, the Virgin Islands Waste Management Authority, the Virgin Islands Police Department, and the Virgin Islands Port Authority, etc., to VIHFA for approval.

If these agreements involve grant fund expenditures, they must follow the process for NTP #1, #2, and #3 to ensure a free and open competitive process.

- 12. Reporting Benchmarks:** The Subrecipient shall submit regular monthly and quarterly progress and financial reports to the Grantee detailing the status of deliverables with a breakdown on project progress and meeting performance goals and timelines. Monthly reports are due by no later than the 20th day of each month for the preceding month. The Subrecipient shall meet the following benchmarks and report as indicated.
- 13. Budget:** The Subrecipient shall complete all activities in this Agreement in accordance with the appropriate project budget below. Each project must receive a preliminary review and approval from VIHFA prior to moving to an environmental review. Any amendments to the budget(s) must be approved in writing by both the Grantee and the Subrecipient. In no case shall any such amendments, revisions, or reallocations exceed the total allocation of CDBG-MIT Funds without prior written consent of the Grantee. All budget costs must be reasonable, eligible, and allowable.

A. Budget Table

| Project Name | Project Type | Source | Cost (Direct) |
|--|-----------------------------|----------|------------------|
| Veterans Drive Mitigation Project Phase II | Public Facility Improvement | CDBG-MIT | \$124,400,000.00 |
| | | Other | \$73,000,000.00 |
| | Total | | \$197,400,000.00 |

B. Activity Delivery Cost Definitions

- **Solicitation:** This refers to the costs associated with the process of soliciting, advertising, and conducting procurement for construction or development services. Solicitation costs are typically tied to the preparation of bids or proposals, the public advertising of a project, and

costs associated with preparing and managing contracts for these services.

- **Construction:** Construction costs refer to the expenses related to the actual construction activities involved in the development of a housing project or public infrastructure. These costs include labor, materials, equipment, permits, and other expenses directly related to building or renovation of structures or facilities.
- **Engineering/Architectural Design:** Engineering and architectural design costs refer to expenses associated with planning, designing, and preparing for construction. These costs include fees paid to architects, engineers, and other professionals who create the designs and plans necessary to construct or renovate housing or public infrastructure. This category covers the preparation of blueprints, plans, surveys, environmental assessments, and other design-related services.
- **Environmental Review Costs:** These costs are associated with performing environmental assessments, environmental impact studies, or other environmental compliance activities required by federal, state, or local regulations. They ensure that the project adheres to environmental laws and guidelines, such as those under the National Environmental Policy Act (NEPA).
- **Project Management and Administration:** These are costs associated with overseeing and managing the infrastructure project, ensuring it stays on schedule and within budget. It includes personnel costs for project managers, administrators, and other staff involved in the execution and coordination of the project.
- **Construction Management:** This includes costs for managing and supervising construction activities, ensuring the work complies with contracts, specifications, and safety standards. It may include the cost of hiring a construction management firm or individuals responsible for managing the construction process.
- **Survey and Inspection Costs:** Costs related to conducting surveys (land, boundary, or topographic) and inspections (structural, safety, or compliance inspections) throughout the project lifecycle. These are important for assessing the project site and ensuring compliance with building codes and standards.
- **Utility Relocation or Infrastructure Improvement:** These costs are associated with the relocation of existing utilities or the installation of new utilities, including water, sewer, electrical, gas, or telecommunications infrastructure. This is particularly relevant for large-scale infrastructure projects that require adjustments to existing systems to make way for new construction.
- **Testing and Quality Assurance:** These are costs associated with ensuring that the materials and construction work meet the required standards. Testing may include materials testing (e.g., soil tests, concrete tests) and quality assurance checks to confirm that all work complies with regulations and contract terms.

- **Demolition and Site Preparation:** If the infrastructure project involves the demolition of existing structures or extensive site preparation work (e.g., clearing land, grading), these costs would fall under this category. Demolition often includes environmental considerations such as hazardous materials removal (e.g., asbestos or lead paint).
- **Monitoring and Evaluation Costs:** These costs are related to tracking and assessing the progress and effectiveness of the infrastructure project, including monitoring the use of funds, project performance, and compliance with objectives. This is particularly important in ensuring accountability and effective project delivery.
- **Safety and Security Costs:** This includes expenses for ensuring the safety of construction workers and the general public during the project. It may also involve security measures to prevent theft, vandalism, or damage to project materials and equipment.

14. Performance and Timeline Requirements: The Subrecipient shall complete the required activities under the Program Delivery/Deliverables, including 100% expenditure of allocated funds, within the timeframes outlined in this Exhibit B.

The Subrecipient agrees to comply with the projects' draw down request terms and agrees to use best efforts to comply with benchmarks as outlined in the Reporting section of this Agreement. Grant Funds not anticipated to be expended by the outlined deadline, or extended, are subject to recapture and reallocation to other eligible CDBG-MIT Projects areas and/or Territorial agencies.

This Agreement and its terms and conditions shall remain in effect during any period that the Subrecipient has control over CDBG-MIT funds provided through this Agreement, including program income as defined in 24 CFR 570.489(e), 83 FR 5844, and 83 FR 40314.

EXHIBIT C

HUD GENERAL PROVISIONS (“HUD RIDER”)

The following terms and conditions apply to any contract for which any portion of the funding is derived from a grant made by the United States Department of Housing and Urban Development (“HUD”). In addition, Contractor/Subcontractor shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at <https://www.hud.gov/sites/dfiles/OCHCO/documents/4010.pdf>.

1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then, upon the application of either Party, the Agreement shall forthwith be amended in writing to make such insertion or correction.

2. STATUTORY AND REGULATORY COMPLIANCE

Contractor/Subcontractor shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by the Disaster Relief Appropriations Act, 2017 (Pub. L. 115-56) and the Bipartisan Budget Act of 2018 (“BBA”), (Pub. L. 115-123), including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.

3. BREACH OF CONTRACT TERMS

VIHFA reserves its right to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of this contract, in instances where the Contractor or any of its subcontractors violate or breach any contract term. If the Contractor or any of its subcontractors violate or breach any contract term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

4. REPORTING REQUIREMENTS

The Contractor/Subcontractor shall complete and submit all reports, in such form and according to such schedule, as may be required by VIHFA. The Contractor/Subcontractor shall cooperate with all VIHFA efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 24 C.F.R. §§ 85.40-41 (or 84.50-52, if applicable) and 570.507.

5. ACCESS TO RECORDS

The State, the U.S. Department of Housing and Urban Development, the Comptroller General of the

United States, or any of their duly authorized representatives, shall have at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Subcontractor which are related to this contract, for the purpose of inspection, audits, examinations, and making excerpts, copies, and transcriptions.

6. MAINTENANCE/RETENTION OF RECORDS

All records connected with this contract will be maintained in a central location and will be maintained for a period of at least three (3) years following the date of final payment and close-out of all pending matters related to this contract.

7. SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

The Contractor/Subcontractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises.
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

8. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Subrecipient in any resulting invention in accordance with 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.

9. ENERGY EFFICIENCY

The Contractor/Subcontractor shall comply with mandatory standards and policies relating to energy efficiency issued in compliance with the Energy Policy and Conservation Act (Public Law 94 - 163).

10. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Contractor/Subcontractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

11. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Contractor/Subcontractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

12. SECTION 504 OF THE REHABILITATION ACT OF 1973

The Contractor/Subcontractor shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 94), as amended, and any applicable regulations.

The Contractor/Subcontractor agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from HUD.

13. AGE DISCRIMINATION ACT OF 1975

The Contractor/Subcontractor shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

14. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Contractor/Subcontractor represents and warrants that it and its subcontractors are not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs subject to 2 C.F.R. part 2424.

15. CONFLICTS OF INTEREST

The Contractor/Subcontractor shall notify VIHFA as soon as possible if this contract or any aspect related to the anticipated work under this contract raises an actual or potential conflict of interest (as defined at 24 C.F.R. § 570.489 (g) and (h); 24 C.F.R. 570.611. The Contractor/Subcontractor shall explain the actual or potential conflict in writing in sufficient detail so that the State is able to assess such actual or potential conflict. The Contractor/Subcontractor shall provide VIHFA with any additional information necessary for VIHFA to fully assess and address such actual or potential conflict of interest. The Contractor/Subcontractor shall accept any reasonable conflict mitigation

strategy employed by VIHFA, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict.

16. SUBCONTRACTING

When subcontracting, the Contractor/Subcontractor shall solicit for and contract with such Contractor/subcontractors in a manner providing for fair competition. Some of the situations considered to be restrictive of competition include but are not limited to:

- a. Placing unreasonable requirements on firms in order for them to qualify to do business,
- b. Requiring unnecessary experience and excessive bonding,
- c. Noncompetitive pricing practices between firms or between affiliated companies,
- d. Noncompetitive awards to consultants that are on retainer contracts,
- e. Organizational conflicts of interest,
- f. Specifying only a *brand name* product instead of allowing *an equal* product to be offered and describing the performance of other relevant requirements of the procurement, and
- g. Any arbitrary action in the procurement process.

The Contractor/Subcontractor represents to VIHFA that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract.

The Contractor will include these HUD General Provisions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

17. ASSIGNABILITY

The Contractor/Subcontractor shall not assign any interest in this contract and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of VIHFA.

18. INDEMNIFICATION

The Contractor/Subcontractor shall indemnify, defend, and hold harmless VIHFA and its agents and employees from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the Contractor/Subcontractor in the performance of the services called for in this contract.

19. COPELAND “ANTI-KICKBACK” ACT (Applicable to all construction or repair contracts)

Salaries of personnel performing work under this contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Copeland “Anti-Kickback Act” of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. § 874; and Title 40 U.S.C. § 276c). The Contractor shall comply with all applicable “Anti-Kickback” regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

20. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(Applicable to construction contracts exceeding \$2,000 and contracts exceeding \$2,500 that involve the employment of mechanics or laborers)

The Contractor/Subcontractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.

21. DAVIS-BACON ACT

(Applicable to construction contracts exceeding \$2,000 when required by Federal program legislation.)

The Contractor/Subcontractor shall comply with the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

22. TERMINATION FOR CAUSE

If, through any cause, the Contractor/Subcontractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor/Subcontractor shall violate any of the covenants, agreements, or stipulations of this contract, VIHFA shall thereupon have the right to terminate this contract by giving written notice to the Contractor/Subcontractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such

termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor/Subcontractor under this contract shall, at the option of VIHFA, become VIHFA's property and the Contractor/Subcontractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor/Subcontractor shall not be relieved of liability to VIHFA for damages sustained by VIHFA by virtue of any breach of the contract by the Contractor/Subcontractor, and VIHFA may withhold any payments to the Contractor/Subcontractor for the purpose of set-off until such time as the exact amount of damages due to VIHFA from the Subcontractor is determined.

23. TERMINATION FOR CONVENIENCE

VIHFA may terminate this contract at any time by giving at least thirty (30) days' notice in writing to the Contractor/Subcontractor. If the contract is terminated by VIHFA as provided herein, the Contractor/Subcontractor will be paid for the time provided and expenses incurred up to the termination date.

24. SECTION 503 OF THE REHABILITATION ACT OF 1973

The Contractor/Subcontractor shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

Equal Opportunity for Workers With Disabilities

- A.** The Contractor/Subcontractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor/Subcontractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:
 - a. Recruitment, advertising, and job application procedures.
 - b. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
 - c. Rates of pay or any other form of compensation and changes in compensation.
 - d. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
 - e. Leaves of absence, sick leave, or any other leave.
 - f. Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor.
 - g. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.
 - h. Activities sponsored by the contractor including social or recreational programs; and
 - i. Any other term, condition, or privilege of employment.
- B.** The Contractor/Subcontractor agrees to comply with the rules, regulations, and relevant orders

of the Secretary of Labor issued pursuant to the act.

- C. In the event of the Contractor/Subcontractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

The Contractor/Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Contractor's/Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Contractor/Subcontractor must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor/Subcontractor may have the notice read to a visually disabled individual or may lower the posted notice so that it might be read by a person in a wheelchair).

- D. The Contractor/Subcontractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor/Subcontractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.
- E. The Contractor/Subcontractor will include the provisions of this clause in every subcontract or purchase order, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor/Subcontractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

25. EXECUTIVE ORDER 11246

The Contractor/Subcontractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 C.F.R. chapter 60).

During the performance of this contract, the Contractor/Subcontractor agrees as follows:

- A. The Contractor/Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor/Subcontractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- B.** The Contractor/Subcontractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor/Subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C.** The Contractor/Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The Contractor/Subcontractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- D.** The Contractor/Subcontractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E.** The Contractor/Subcontractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F.** In the event of the Contractor's/Subcontractor's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Contractor/Subcontractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- G.** Contractor/Subcontractor shall incorporate the provisions of A through G above in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor so that such provisions shall be binding on such contractor/subcontractor. The Contractor/Subcontractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor/Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

26. CERTIFICATION OF NONSEGREGATED FACILITIES

The Contractor/Subcontractor certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor/Subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

27. CERTIFICATION OF COMPLIANCE WITH CLEAN AIR AND WATER ACTS

The Contractor and all its subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. § 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq., and the regulations of the Environmental Protection Agency (EPA) with respect thereto, at 40 C.F.R. Part 15 and 32, as amended, Section 508 of the Clean Water Act (33 U.S.C. § 1368) and Executive Order 11738.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

- A.** A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. 32 or on the List of Violating Facilities issued by the EPA pursuant to 40 C.F.R. Part 15, as amended.
- B.** Agreement by the Subcontractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C.** A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.

- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (A) through (D) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

28. LOBBYING

The Contractor/Subcontractor certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor/Subcontractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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, the Contractor/Subcontractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- (2) The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipient s shall certify and disclose accordingly.

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

29. BONDING REQUIREMENTS

The Contractor/Subcontractor shall comply with VIHFA bonding requirements, unless they have not been approved by HUD, in which case the Contractor/Subcontractor shall comply with the following minimum bonding requirements:

- (1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

- (2) *A performance bond on the part of the Contractor/Subcontractor for 100 percent of the contract price.* A “performance bond” is one executed in connection with a contract to secure fulfillment of all the Contractor’s/Subcontractor’s obligations under such contract.
- (3) *A payment bond on the part of the Contractor/Subcontractor for 100 percent of the contract price.* A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

30. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are Subrecipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD’s regulations in 24 C.F.R. part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The Contractor/Subcontractor agrees to send to each labor organization or representative of workers with which the Contractor/Subcontractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the Contractor’s commitments under this Section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The Contractor will not subcontract with any subcontractor where the subcontractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.
- E. The Contractor/Subcontractor will certify that any vacant employment positions, including training positions, that are filled: (1) after the contractor/subcontractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor/Subcontractor’s obligations under 24 C.F.R. part 135.
- F. Noncompliance with HUD’s regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible:
- (i) preference and opportunities for training and employment shall be given to Indians, and
 - (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian- owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

31. FAIR HOUSING ACT

Contractor/Subcontractor shall comply with the provisions of the Fair Housing Act of 1968 as amended. The act prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap, or familial status. The Equal Opportunity in Housing Act prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing, or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds. Please visit http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11868.pdf for more information.

32. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended, was signed with the intent of reducing wasteful government spending and providing citizens with the ability to hold the government accountable for spending decisions. 2 C.F.R. Part 170 outlines the requirements of Subrecipient s' in reporting information on subawards and executive total compensation under FFATA legislation. Any non-Federal entity that receives or administers Federal financial assistance in the form of grants, loans, loan guarantees, subsidies, insurance, food commodities, direct appropriations, assessed and voluntary contributions; and/or other financial assistance transactions that authorize the non-Federal entities' expenditure of Federal fund, is subject to these requirements.

Prime contract awardees and prime grant awardees are required to report against subcontracts and subgrants awarded in the FFATA Subaward Reporting System (FSRS), the reporting tool for Federal prime awardees. This information reported will then be displayed on a public and searchable website: www.USASpending.gov.

33. PROCUREMENT

The Uniform Guidance procurement requirements (2 C.F.R. Part 200, Subpart D) went into effect on July 1, 2018. These requirements are applicable to CDBG-MIT funded projects, or as provided by 83 Federal Register 5844 VI A(1)(b)(2) permits a state grantee to elect to follow its own procurement policy. These policies and procedures ensure that Federal dollars are spent fairly and encourage open

competition at the best level of service and price. Standards for procurement of supplies, equipment, construction, engineering, architectural, consulting, and other professional services are outlined in Title 31, Chapter 23, Sections 231-251 of the Virgin Islands Code and Title 31, Chapter 23, of the Virgin Islands Regulations.

34. CHANGE ORDERS TO CONTRACTS

Change orders are issued when the initial agreed upon pricing or work to be completed requires modification. First, the contractor must complete a Change Order Request Form. This form and supporting documentation must be delivered to the Project Manager for review. Each change order must have a cost analysis. Once the Project Manager approves the change order, it is returned to the contractor for execution. Change orders are only invoiced on the final draw and categorized as “change order.” The amount listed on the invoice must match the previously approved amount and must be cost reasonable. The Project Manager is responsible for verifying cost reasonableness. Verification documentation for cost reasonableness becomes an attachment to the change order.

35. ENVIRONMENTAL REVIEW

Every project undertaken with Federal funds, and all activities related to that project, is subject to the provisions of the National Environmental Policy Act of 1969 (NEPA), as well as to the HUD environmental review regulations at 24 C.F.R. Part 58- ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES. The primary purpose of this Act is to protect and enhance the quality of our natural environment. The HUD environmental review process must be completed before any Federal funds can be accessed for program-eligible activities.

The primary objectives of the HUD environmental review are to identify specific environmental factors that may be encountered at potential project sites, and to develop procedures to ensure compliance with regulations pertaining to these factors. The HUD environmental review is designed to produce program-specific environmental review procedures in a program that can vary greatly in terms of scope of work.

36. LEAD BASED PAINT

All housing units assisted using CDBG-MIT funds must comply with the regulations regarding lead-based paint found at 24 C.F.R. Part 35- LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES.

37. ENVIRONMENTAL REVIEW RECORD

The Environmental Officer is responsible for maintaining a written record of the environmental review process. The ERR for all programs contains all the governmental review documents, public notices and written determinations or environmental findings required by 24 C.F.R. Part 58- ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES as evidence of the review, decision making and actions pertaining to a project of a Subrecipient .

38. FLOOD INSURANCE REQUIREMENTS

Grantees and Subrecipients of Federal funding must ensure that procedures and mechanisms are put into place to monitor compliance with all flood insurance requirements as found in the Flood Disaster Protection Act of 1973, 24 C.F.R. § 570.605- NATIONAL FLOOD INSURANCE PROGRAM and 24 C.F.R. § 570.202- ELIGIBLE REHABILITATION AND PRESERVATION ACTIVITIES.

39. DUPLICATION OF BENEFITS

CDBG-MIT funding intends to address the unmet needs of a community. The funds are supplemental to primary forms of assistance, including private insurance and FEMA funds. The Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. § 5121 et seq., established the requirements for Duplication of Benefits (DOB) analysis.

40. ANTI-FRAUD, WASTE AND ABUSE CHECKS

The Anti-Fraud, Waste and Abuse (AFWA) check is designed to identify discrepancies and risk-relevant issues in Applicant-provided information that may be indicative of fraud, waste, and/or abuse.

41. AFFIRMATIVELY FURTHERING FAIR HOUSING

The Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601, et seq., dictates that grantees are required to administer all programs and activities related to housing and urban development in a manner to affirmatively further the policies of the Fair Housing Act. Per the regulations of 24 C.F.R. § 570.601 and in accordance with Section 104(b)(2) of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301 et seq., for each community receiving a grant under Subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to take meaningful actions to further the goals identified in the grantee's Assessment of Fair Housing (AFH) plan, conducted in accordance with the requirements of 24 C.F.R. §§ 5.150-5.180 (Affirmatively Furthering Fair Housing) and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

42. DRUG FREE WORKPLACE

The Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 81, as implemented by 24 C.F.R. § Part 24, Subpart F, §§ 983.251-983.262, requires that any grantee other than an individual must certify that it will provide a drug-free workplace. Any grantee found in violation of the requirements of this act may be subject to suspension of payments under the grant, suspension or termination of the grant or suspension or debarment of the grantee.

43. TIMELY DISTRIBUTION OF FUNDS

The Supplemental Appropriations for Disaster Relief Requirements, 2017 (Pub. L. 115-56), approved September 8, 2017 (Appropriations Act), as amended, requires that funds provided under the Act be expended within two (2) years of the date that HUD obligates funds to a grantee unless otherwise authorized via waiver of this requirement by the Office of Management and Budget (OMB). The OMB waived the two (2) year expenditure requirement under 83 Fed. Reg. 40314 (Aug. 14, 2018);

however, the provision to expend one hundred percent (100%) of the total allocation of CDBG-MIT funds on eligible activities within six (6) years of HUD's initial obligation of funds remains in effect. The six (6) year expenditure period commences with the initial obligation of funds provided under 83 Fed. Reg. 5844 (Feb. 14, 2018). Additionally, per 83 Fed. Reg. 5844, the provisions at 24 C.F.R. §§ 570.494 and 570.902, regarding timely distribution and expenditure of funds, are waived and an alternative requirement was established.

Furthermore, consistent with 31 U.S.C § 1555 and OMB Circular No. A-11 (2017), if the Secretary of HUD or the President of the United States determines that the purposes for which the appropriation was made have been carried out and no disbursement has been made against the appropriation for two (2) consecutive fiscal years, any remaining unobligated balance shall be canceled and will be made unavailable for obligation or expenditure for any purpose.

44. PROPERTY MANAGEMENT AND DISTRIBUTION

Regulations governing property management and distribution of real property, equipment, financial obligations and return of un-obligated cash post program closeout can be found in 24 C.F.R. § 570.506, 2 C.F.R. § 200.310, 2 C.F.R. § 200.343 and 2 C.F.R. § 200.344(b). The standards of 24 C.F.R. § 570.506 apply to any real property under a CDBG award Subrecipient's control acquired in whole or in part with CDBG funds in excess of \$25,000.00. The Subrecipient may not change the use or planned use of the property without proper notification to affected citizens and allowable time for comment by them. If the property is not a building for general government conduct, the use of the property may be changed with citizen approval if it either meets one of the national objectives as defined in 24 C.F.R. § 570.208 or if not, the Subrecipient may either retain or dispose of the property for the changed use if the Subrecipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property. Following such reimbursement, the property will no longer be subject to any CDBG requirements.

45. LIMITED ENGLISH PROFICIENCY

Executive Order No. 13166, signed on August 11, 2000, requires programs, Subrecipient s, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-MIT financial assistance to ensure fair and meaningful access to programs and services for families and individuals with Limited English Proficiency (LEP) and/or deaf/hard of hearing. Fair access is ensured through the implementation of a Language Assistance Plan (LAP), which includes non-English-based outreach, translation services of vital documents, free language assistance services, and staff training. Vital documents are defined as depending on the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.

46. PERSONALLY IDENTIFIABLE INFORMATION

In accordance with 2 C.F.R. § 200.303, regarding internal controls of a non-Federal entity, a grantee must guarantee the protection of all Personally Identifiable Information (PII) obtained. The program will enact necessary measures to ensure PII of all applicants is safeguarded as to avoid release of

private information. If a contractor or employee should experience any loss or potential loss of PII, the program shall be notified immediately of the breach or potential breach.

47. UNIFORM RELOCATION ACT

CDBG-MIT funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA or Uniform Act), as amended. 49 C.F.R. § Part 24 requires relocation assistance for lower-income individuals displaced as a result of the demolition or conversion of a lower-income dwelling and requires one-for-one replacement of lower-income units demolished or converted to other uses.

48. RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN.

Per Section 104(d) of the Housing and Community Development Act of 1974 § 42.325

A. Certification.

- (1) As part of its consolidated plan under 24 CFR Part 91, the Subrecipient must certify that it has in effect and is following a residential anti-displacement and relocation assistance plan.
- (2) A unit of general local government receiving funds from the State must certify to the State that it has in effect and is following a residential anti-displacement and relocation assistance plan, and that it will minimize displacement of persons as a result of assisted activities. The State may require the unit of general local government to follow the State's plan or permit it to develop its own plan. A unit of general local government that develops its own plan must adopt the plan and make it public.

B. Plan contents.

- (1) The plan shall indicate the steps that will be taken consistent with other goals and objectives of the program, as provided in Parts 92 and 570 of this title, to minimize the displacement of families and individuals from their homes and neighborhoods as a result of any assisted activities.
- (2) The plan shall provide for relocation assistance in accordance with § 42.350.

49. COMPLAINTS AND APPEALS

Citizen comments on VIHFA's published Action Plan, any substantial amendments to the Action Plan, performance reports and/or other issues related to the general administration of CDBG-MIT funds are welcomed throughout the duration of the grant. The Citizen Participation Plan is posted as a stand-alone document at www.vihfa.gov. Complaints regarding fraud, waste, or abuse of government funds shall be addressed to the HUD Office of Inspector General Fraud Hotline by phone: 1-800-347- 3735 or email: hotline@hudoig.gov.

50. MONITORING

As per CDBG regulation, 24 C.F.R. § 570.501(b), grantees of CDBG-DR funds are responsible for carrying out their programs to meet compliance with CDBG Program, statutory and regulatory requirements, including monitoring their project administrators, contractors, and subcontractors. As such, throughout the application, planning, design, and implementation phase of the program, VIHFA will conduct internal monitoring of processes, procedures, policy, applications, planning, design, construction, and other applicable phases.

51. PROCUREMENT OF RECOVERED MATERIALS

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

“WARNING: ANY PERSON WHO KNOWINGLY MAKES A FALSE CLAIM OR STATEMENT TO HUD MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES UNDER 18 U.S.C. 287, 1001 AND 31 U.S.C. 3729.”

EXHIBIT D
GENERAL CONTRACT CONDITIONS

In addition to applying to this Agreement, Subrecipient shall include the provisions of this Section in each Third-Party contract as applicable.

A. INDEPENDENT CONTRACTOR

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating, or establishing the relationship of employer/employee between the Parties. In the event that the Subrecipient contracts with third parties, including any Subrecipient or Contractor, to perform any of the services to be performed hereunder, such third parties shall at all times remain an “independent contractor” with respect to the provision of such services. The VIHFA shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers’ Compensation Insurance, with respect to such third-party contracts or Grant Fund Sub-Agreements.

B. HOLD/HARMLESS/INDEMNITY CONTRACTORS/SUBCONTRACTORS

To the extent that the SUBRECIPIENT is authorized to and utilizes the services of any third parties in performance of its duties and obligations in implementing the Projects described in this Agreement, any contract entered into shall contain a provision that the Contractor and/or Subcontractor shall hold the SUBRECIPIENT and the VIHFA harmless and defend and indemnify the SUBRECIPIENT and the VIHFA against any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Contractor and/or Subcontractor’s performance or nonperformance of the services.

C. MECHANIC’S LIEN

Contractor agrees to protect, defend, and indemnify the SUBRECIPIENT and VIHFA from any claims for unpaid work, labor, or materials with respect to Contractor’s Performance. Final payment shall not be due until the Contractor has delivered to the SUBRECIPIENT a complete release of all liens for work completed arising out of Contractor’s Performance or a receipt in full covering all labor and materials for which a lien could be filed or a bond satisfactory to the SUBRECIPIENT indemnifying the SUBRECIPIENT against any and all liens.

D. WORKER’S COMPENSATION

The SUBRECIPIENT shall require its Contractors/Vendors to provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of any projects undertaken thereto under this Agreement.

E. PRELIMINARY INSPECTION

Prior to request for final inspection, the Contractor shall notify both VIHFA and SUBRECIPIENT of the anticipated completion date so that any major defects or deficiencies may be pointed out to the Contractor for correction prior to the final inspection.

F. FINAL INSPECTION

The Scope of Work shall be considered complete upon acceptance by the SUBRECIPIENT after a final inspection conducted by VIDPW and/or VIHFA (upon VIHFA's request to also conduct a final inspection).

G. MAINTENANCE OF AREA/FINAL CLEAN-UP & REMOVAL OF DEBRIS

Contractor agrees to maintain the work area free from major obstructions/hazards to the greatest extent possible, and to ensure safe access to the project site at all times. Contractor agrees to remove all construction debris and surplus material from the property. The Contractor shall remove all construction related debris material from the construction site.

H. INSURANCE & BONDING

The SUBRECIPIENT shall require a Contractor to maintain liability insurance for protection against claims for damages because of bodily injury or death, claims for damages, to property which may arise out of or result from the Contractor's operation under a contract whether such operations be by the Contractor or by any Subcontractor or anyone directly or indirectly employed by any of them. This specific coverage amount for each project shall be identified in the ensuing contract for each specific project and the Contractor shall, upon request, present the SUBRECIPIENT with a certificate of such insurance.

I. AFFIRMATIVE ACTION PLAN

In order to comply with Section 3 and Executive Order 11246, the U.S. Department of Housing and Urban Development requires that all contractors develop and implement an Affirmative Action Plan. This plan is a series of forms and statements, which shows specific steps taken by the contractor to promote Equal Opportunity and the utilization of area residents and business in the implementation of this Contract. This plan must be submitted to the SUBRECIPIENT and VIHFA.

J. SAFETY

The SUBRECIPIENT shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages or property, either on or off the worksite, which occur as a result of its performance of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by 29 CFR 1926, shall be observed and the SUBRECIPIENT shall take or cause to be taken such additional safety and health measures as the SUBRECIPIENT may determine to be reasonably necessary.

The SUBRECIPIENT shall provide safety insurance for its employees and shall require all Contractors, and Subcontractors to provide safety insurance for their employees.

K. SECTION 106 COMPLIANCE

The Contractor shall ensure that areas of archaeological sensitivity will not be disturbed during construction. No heavy equipment shall be used in any area which has been determined to be an area of archaeological sensitivity. The Contractor agrees that, if there is any question relative to the

archaeological value or historic designation of the site in general or any specific features on the site, it shall seek guidance from the State of Historic Preservation Office of the Department of Planning and Natural Resources before undertaking any work.

L. CONTRACTOR'S REPRESENTATIONS

The Contractor shall warrant that it is fully informed regarding all the conditions affecting the work to be done and labor and materials to be furnished for the completion of the Contract. Contractor shall further represent that it is fully equipped, competent, and capable of performing the work and is available to perform such work.

The Contractor will warrant that it, and any subcontractors, is eligible to receive contract awards using federally appropriated funds and that it is not suspended or debarred from entering into contracts with any federal agency.

In the event the Contractor, or sub-contractor, misrepresents its eligibility to receive contract awards using federal funds, Agency agrees that said contractor or sub-contractor shall not be entitled to any payment for any work performed under this Contract and that it shall require the contractor or sub-contractor to promptly reimburse any progress payments heretofore made.

Nevertheless, this provision does not discharge Agency or VIHFA from their respective due diligence and undertaking its own independent search under "SAMS" to determine a Contractor's or sub-contractor's eligibility to receive contract awards using federal funds.

M. FALSE CLAIMS

The Contractor/vendor will warrant that it shall not, with respect to this Contract, make or present any false claim upon or against the SUBRECIPIENT. The Contractor will acknowledge that making such a false, fictitious, or fraudulent claim is an offense under the Virgin Islands law.

The Contractor will acknowledge that its Contract is funded, in whole or in part, by federal funds. The Contractor will warrant that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious, or fraudulent. The Contractor will acknowledge that making such false, fictitious, or fraudulent claim is a federal offense.

EXHIBIT E
NON- CONFLICT OF INTEREST: SUBRECIPIENT

Subrecipient Non-Conflict of Interest Certification

By signing this form, the Subrecipient certifies that:

1. To the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to an organizational or personal conflict of interest, for the organization or any of its staff, and that the Subrecipient has and will disclose all such relevant information if such a conflict of interest appears to exist. Further:
 - No staff of the **VIRGIN ISLANDS DEPARTMENT OF PUBLIC WORKS** has any financial interest, whether implicit or explicit, in this Agreement or potential contracts, purchases, or any other commercial transactions that may derive from this Agreement.
 - No staff member has requested of the authorized representative/organization or accepted from the authorized representative/organization, implicit or explicit, for any of their family unit or persons: gifts, bonuses, favors, services, donations, loans, or any item of monetary value in exchange for activities and actions of this Agreement.
 - No staff member has accepted anything of economic value based on this Agreement from any person or entity as payment for favorable decision to that person or entity for any activity that may derive from this Agreement.
 - No staff member has requested of the authorized representative or organization, implicit or explicit, for themselves, any member of their family unit, any other person, business, or entity, something of monetary value including gifts, loans, promises, favors, or services in exchange for performance of the staff member in my favor or of my organization.
2. The Subrecipient has and will continue to exercise due diligence in identifying and removing or mitigating, to the VIHFA's satisfaction, potential or apparent conflict of interest.

I hereby certify under penalty of perjury that the foregoing is complete, true, and correct.

Name and Title of Authorized Representative:



Signature

April 7, 2025

Date

Derek Gabriel

Print Name

Commissioner, Dept. of Public Works

Title

Subrecipient Agreement No.: SA-MIT-(DPW)-001-2025

Subrecipient: Virgin Islands Department of Public Works

EXHIBIT F
MONTHLY STATUS REPORTS

(Monthly Status Report, (“MSR”) will be provided on grants.vihfa.gov.)

EXHIBIT G SPECIAL CONDITIONS

1. GENERAL

VIHFA has determined specific risks associated with this grant and therefore has set forth additional grant terms and conditions for this Subrecipient. These Special Conditions are incorporated into this Agreement. By signing this Agreement, the Subrecipient agrees to these special conditions for the receipt of the CDBG funds, which may be amended from time to time. In the event of an inconsistency, these Special Conditions shall take precedence over the terms and conditions of this Agreement to the extent of that inconsistency.

2. AUTHORITY TO USE GRANT FUNDS (RELEASE OF FUNDS)

No cost shall be incurred/disbursed until after the subrecipient has received a notice to proceed from VIHFA that VIDPW has satisfied the specific requirements listed herein from the release of the CDBG-MIT funds.

VIDPW shall meet the required Special Conditions within ninety (90) calendar days, unless otherwise stated herein, after the execution of the Subrecipient Agreement.

A. ENVIRONMENTAL REVIEW:

The Subrecipient shall not commit funds or begin work on any project with the intention of seeking reimbursement through VIHFA prior to the completion of the environmental review requirements.

This agreement does not constitute a commitment of funds or site approval, and the commitment of funds or approval may occur only upon satisfactory completion of the environmental review and receipt by VIHFA's an approval of the request for release of funds and certification from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The provision of any funds to the project is conditioned on the VIHFA's determination to proceed with, modify or cancel the project based on the results of the environmental review.

A. VIDPW Submit commit of the following permits

- CZM Permit CZT-3-12(L&W) as amended that is necessary to satisfy the provisions of the Coastal Zone Management Act.
- Department of the Army permit number, SAJ-1996-01459 (SP-JCM). A permit to dredge approximately 39,252 cubic yards of sediments and fill approximately 8.57 acres of marine bottom at Charlotte Amalie Harbor to widen a 1.38-mile-long section of Veterans Drive.

3. MEMORANDUMS OF UNDERSTANDING AND OTHER CONTRACTUAL AGREEMENTS.

No cost will be allowed until VIDPW provides all of its non-financial contracts with non-expenditure agencies. While these entities will not receive financial expenditures from the CDBG-MIT grant

funds, VIHFA will review the documentation for scope and terms that affect the overall project activities.

A. VIPDW submits for the following **within 10 calendar days** of execution of this agreement.

- All Memorandums of Understanding (MOUs) and other contractual agreements related to this project activity to review with any and all federal, state and local partners. This would include but is not limited to the Eastern Federal Lands Highway Division (EFLHD).
- All project-related agreements—such as those with local utilities (e.g., the Virgin Islands Water and Power Authority, the Virgin Islands Waste Management Authority, the Virgin Islands Police Department, and the Virgin Islands Port Authority, etc., to VIHFA for approval.

B. If the agreement shown above involve grant fund expenditures, they must follow the process for Notices to proceed as written in NTP #1, #2, and #3 to ensure a free and open competitive process.

- All conditions and task orders that have been derived or in draft with the procurement division of the Federal Procurement through Eastern Federal Lands Highway Division (EFLHD).
- All recommendations issued by EFLHD or provided to VIDPW Evaluation Committee's Recommendations and requests DPW's Concurrence In Award. DPW can then request VIHFA's Concurrence in Award.
- VIHFA may be invited to observe EFLHD's Bid Evaluation as a Non-voting member.

4. OTHER SPECIAL CONDITIONS IN ACCORDANCE WITH CDBG-MIT ARE AS FOLLOWS:

- A. As a condition of receiving this subaward, the Subrecipient shall administer the Veterans Drive Mitigation Improvement Project Phase 2 which includes performing all the work described in this section. The Subrecipient shall complete the activities in a manner satisfactory to the Grantee and consistent with the terms of the conditions of this agreement and applicable Federal statutes and regulations.
- B. Grant funds must be used for their intended purposes. The costs incurred shall only be as necessary and allowable to carry out the purposes and activities of the approved projects and may not exceed the maximum limits set in the approved budget. Grant recipients must account for costs and expenditures. Grant funds cannot be used to pay late fees penalties, and any loan obligations, including debt service payments.
- C. No costs shall be incurred/disbursed until after VIDPW has received a written Notice to Proceed from VIHFA that the VIDPW (Agency) has satisfied the specific requirements listed herein for the release of CDBG-MIT funds. VIDPW may submit a request for Authority to Use CDBG-MIT Funds.

- D.** Within ninety (90) calendar days of the execution of this Agreement, the Subrecipient shall provide VIHFA a copy of the MOA or documentation outlining the agreements between the VI Department of Public Works, the VI Water and Power Authority, and the VI Waste Management Authority during the construction of Veterans Drive Mitigation Project Phase 2. Provide the scope of work to be completed on behalf of VI Water and Power Authority and the VI Waste Management Authority.
- E.** The Subrecipient must provide to VIHFA within ninety (90) calendar days of the execution of this Agreement a listing of all agencies involved in the implementation of the Veterans Drive Mitigation Improvement Project. This list must contain the functions and responsibilities of the agency as well as its scope of work.
- F.** The Subrecipient must notify VIHFA of all procurement events and share all procurement documents including (including draft Contract) for review to ensure compliance with CDBG-MIT funded requirements **prior to the start of its procurement process.**
- G.** The Subrecipient shall maintain oversight of all activities under this agreement and shall ensure that for any procured contract or agreement, its contractors perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this agreement.
- H.** All procurement issued and contracts executed shall include the federal cross-cutting measures that are applicable to the CDBG-MIT Program.
- I.** The Subrecipient must comply with CDBG-MIT regulations regarding debarred or suspended entities at 24 CFR 570.609 or 24 CFR 570.489(l) as appropriate. The subrecipient must periodically verify that existing contractors are not debarred.
- J.** Within ninety (90) calendar days of the execution of this Agreement, the Subrecipient must provide and update its Accounting Policy (Accounting and Financial Manual) in accordance with 2 CFR 200.302-305, 24 CFR 570.502, and 24 CFR 570.610.
- K.** Within ninety (90) calendar days of the execution of this Agreement, the subrecipient must provide a final Grant Management Policy to ensure the funds are being appropriately managed to 2 CFR 200, and 24 CFR 570.
- L.** Within ninety (90) calendar days of the execution of this Agreement, the Subrecipients must establish a Fraud Waste and Abuse Policy to set in place internal control to prevent and detect fraud, waste and abuse.
- M.** Within ninety (90) calendar days of the execution of this Agreement, The Subrecipient shall provide the final internal and single audit reports for FY 2022.
- N.** The Subrecipient shall provide to VIHFA within ninety (90) calendar days of the execution of

this Agreement a summary of previous audit findings and a Corrective Action Plan for each finding and concern and provide evidence of the completion of each of these actions.

- O.** If the subrecipient's contract costs exceed the budget that was approved due to labor or material cost, VIHFA shall be promptly notified. The budget's approval is pending CDBG-MIT funding availability and is not guaranteed.

