CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT is made this 14th day of December, 2020, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the Department of Tourism (hereinafter referred to as "Government") and Miles Partnership, LLLP (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor for the development and implementation of a Marketing Campaign for the U.S. Virgin Islands (USVI) to promote the territory and enlighten prospective visitors that the U.S. Virgin Islands is open for business post hurricanes. The described services is outlined in Addendum I (Statement of Work) attached hereto; and

WHEREAS as a result of the 2017 hurricanes, Irma and Maria, the U.S. Virgin Islands (USVI) received an allocation of Community Development Block Grant Disaster Recovery (CDBG-DR) funds which will be administered by the Virgin Islands Housing Finance Authority (VIHFA); and

WHEREAS, the Government solicited the services under RFP No.032-T-2020 (P); and

WHEREAS, the Contractor represents that it is willing and capable of providing such services; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

1. SERVICES

The Contractor will provide the services described in Addendum I (Statement of Work) attached hereto and made a part hereof.

2. TERM AND EFFECTIVE DATE

This Contract shall be effective upon the date of execution of this Contract by the Governor of the Virgin Islands and shall terminate Three Hundred and Sixty-Five (365) days thereafter. The Government in its sole discretion, shall have the option to extend this Contract for a period of one (1) year subject to the same terms noted herein, by providing the Contractor with thirty (30) days written notice of the Government’s election to extend.

RFP No. 032-T-2020 (P)
Contract No. P026DOTT21

Contractor’s Initials
3. COMPENSATION
The Government, in consideration of the satisfactory performance of the services described in Addendum I (Statement of Work), agrees to pay Contractor a sum not to exceed Two Million Thirteen Thousand Five Hundred Seventy-five dollars and 00/100 cents ($2,013,575.00) in accordance with the provisions set forth in Addendum II (Compensation) and Addendum III (Cost Proposal) attached hereto and made a part of this contract.

4. TRAVEL EXPENSES
Inclusive of the compensation for services as specified in Paragraph 3 (Compensation) above, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government or as agreed to by an addendum to this Contract, however, said costs and expenses shall not exceed Seventeen thousand, five hundred dollars and 00/100 cents ($17,500.00).

5. RECORDS
The Contractor when applicable, will present documented precise records of time and/or money expended under this Contract.

6. PROFESSIONAL STANDARDS
The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

7. CONFIDENTIAL INFORMATION
It is understood and agreed that Contractor, including but not limited to its employees, agents and assign, shall maintain as confidential all information that Government may disclose to Contractor. Contractor shall take all steps to protect and to not disclose this information, unless the information is either:

i. known to the disclosing party prior to its receipt from the other party without a limitation or obligation of confidentiality under another Contract;
ii. independently developed by the disclosing party without use of the other party’s protected information or data;
iii. in the public domain at the time of disclosure through no fault of the disclosing party;
iv. received from a third party with a legal or contractual right to disclose such information or data; or
v. required to be disclosed as a result of a legal obligation to do so; provided, however, that the disclosing party shall provide 10 days’ prior written notice to the other party of its intention to disclose such information.
8. OWNERSHIP OF MATERIALS

Upon final payment by Government, materials produced under this Contract shall be considered to be owned by Government. In no event shall Contractor be precluded from developing for itself or for others, materials that are competitive with, or similar to, the deliverables. Furthermore, Contractor will continue to be free to use its general knowledge, skills and experience and any ideas, concepts, know-how and techniques that are acquired or used in the course of providing the Services. Materials independently developed and owned by Contractor or by other authors and third parties, and which may be used in the fulfillment of this Contract, remain the property of their authors or owners. Government shall be given advance written notice of any third party materials which are used in the fulfillment of this Contract. Subsequent use of such materials by Government shall require written permission of the Contractor or other author(s) thereof.

9. DOCUMENTS, PRINTOUTS, ETC.

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract. The above described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

10. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance, gross receipt, excise, and social security taxes for Contractor, its servants, agents or independent contractors.

11. ASSIGNMENT

The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Government.

12. INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless (including reasonable attorney’s fees and court costs) VIJHFA, Government, its officers, directors, trustees, employees, representatives and agents from and against any and all claims, actions, suits, charges and judgments whatsoever that arise out of Contractor’s performance or nonperformance of the services under this Contract. This Clause shall survive termination or expiration of this Contract.

Contractor further acknowledges and agrees that neither the Territorial nor federal government may enter into an indemnification Contract which creates or authorizes an obligation under any
appropriation or fund in excess of the amount authorized by the funding authority for this Contract; nor shall any officer or employee involve the government in any contract or obligation for the payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law. See V.I. CODE ANN. tit. 33 § 3101 (Expenditures or contracts in excess of appropriations); see also 31 U.S.C. § 1341 (federal AntiDeficiency Act).

13. INDEPENDENT CONTRACTOR

The Contractor shall perform this Contract as an independent contractor, and nothing herein contained shall be construed to be inconsistent with this relationship or status. Contractor acknowledges and understands that as an Independent Contractor, neither it nor any of its personnel, agents, or subcontractors shall be treated as an employee of Government for purposes of employment taxes, federal and state income tax withholding, social security taxes, city and county taxes, employee benefit provisions, workers’ compensation and state and federal unemployment compensation. Contractor acknowledges and understands that it shall be solely responsible for payment of federal, state and local taxes (including but not limited to gross receipts tax (GRT)) and that Government assumes no responsibility for the payment of taxes on behalf of Contractor or its personnel and that Government will not withhold such taxes on their behalf. In the event that any members of the Contractor’s project team are not available to work on the Project for any reason, Contractor reserves the right to substitute alternative staff of equivalent grade in order to ensure timely completion of the Project.

The Parties further acknowledge and agree that VIHFA shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers’ Compensation Insurance with respect to this Contract.

Contractor shall be solely responsible for payment to all subcontractor tiers retained under this Contract and, provided timely payment is received from Government, agrees to pay all subcontractors under the same invoicing terms applicable to the Parties as set forth in Addendum II and III as follows:

Subcontractor(s) shall be required to invoice Contractor monthly (within five (5) business days of the close of the month) for the work completed through the end of the billing period based on agreed upon hourly rates and fees. After review of the invoice within five (5) business days of submission to Contractor, each approved invoice shall be paid within 10 days of the approval date.

14. TAXES

Contractor is responsible for payment of all applicable federal and local Territorial taxes, including any taxes of any out-of-state employees who are currently assigned to this project and are working within the Territory.

(a) GROSS RECEIPT TAXES: Title 33 V.I.C. Ch.3, §44, as amended¹, requires VIHFA, when making a payment under this Contract, to deduct and withhold from such payments, gross receipts taxes as required by law at 33 VIC Section 43(a) for each payment for Work performed in the Virgin Islands.
Islands. It is agreed between the Parties that for the purposes of complying with Title 33, Ch. 3, Section 44 of the Virgin Islands Code, VIHFA shall withhold and forward to the Virgin Islands Bureau of Internal Revenue ("VIBIR") such amount as required by the law at 33 VIC Section 43(a) or any amendments thereto.

(b) The Contractor agrees that the calculation and payment of gross receipts taxes shall be its sole responsibility. VIHFA shall not be responsible in any way for any miscalculation, or additional assessments by the VIBIR resulting from Work performed under this Contract. In the unlikely event any overpayment or underpayment is made to the VIBIR, the Contractor shall resolve such matter with VIBIR and inform VIHFA of the resolution thereof.

15. AFFIRMATIVE ACTION PLAN

Contractor shall develop and implement an Affirmative Action Plan in compliance with Executive Order 11246 of September 24, 1965, as amended, 2 CDBG-DR and federal regulations for implementing the project, which is a series of forms and statements showing specific steps taken by Contractor to promote Equal Employment Opportunity and the utilization of area residents and businesses in the implementation of this Contract. The Affirmative Action Plan must be submitted to Government and VIHFA.

16. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract make or present any claim upon or against Government, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under U.S. Virgin Islands law, 14 V.I.C. § 843. Contractor acknowledges that its Contract is funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such false, fictitious, or fraudulent claim is a federal offense.

17. GOVERNING LAW

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

18. SEVERABILITY

If any provision(s) of this Contract shall be held to be invalid, illegal, unenforceable or in conflict with the law of the United States Virgin Islands, it shall be regarded as stricken and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
19. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term, condition, or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

20. ENTIRE CONTRACT

This Contract constitutes the entire Contract of the parties relating to the subject matter addressed in this Contract. This Contract supersedes all prior communications, contracts, or Contracts between the parties with respect to the subject matter addressed in this Contract, whether written or oral.

21. FORCE MAJEURE

The Parties' performance under this Contract shall be excused so long as the force majeure event prevents the performance of any obligation hereunder when such delay is occasioned by events or occurrences beyond their control, including but not limited to, acts of God, war or threat of war, government retaliation against foreign or domestic enemies, terrorism, governmental regulation, civil disorder, adverse governmental actions or conditions, epidemic, pandemic, recognized health threats as determined by the Centers for Disease Control and Prevention (CDC) or local health agency, disaster, fire, strikes either real or threatened curtailment of transportation facilities, or other similar cause beyond the control of the Parties (collectively, "Force Majeure"), making it from an economic, political, personal safety, or policy basis, illegal, inadvisable, or objectively impossible or commercially unreasonable to fulfill the terms of this Contract. This Contract may be terminated, and/or specific nonperformance or under-performance may be excused, without penalty or payment, except for those Services already provided, for any one or more of such reasons by written notice from the other Party.

22. PENALTY

The Contractor shall pay to VIHFA, as a penalty, up to $250.00 for each calendar day that a deliverable is late until deemed in compliance, subject to a maximum penalty of $1,000.00 per occurrence. Penalty damages may be assessed at the reasonable discretion of VIHFA. For the purpose of calculating such penalty damages, a grace period of ten (10) days shall be observed and the contracts schedule shall be extended by any additional time or delays outside the control of the Contractor caused by an act of commission, omission or delay of VIHFA. VIHFA may deduct and retain out of the monies, which may become due hereunder the amount of any such liquidated damages. and in case the amount which may become due hereunder shall be less than the amount of the liquidated damages due to VIHFA, the Contractor shall be liable to pay the difference.
23. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by Government if and while Contractor gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable in the event that such contest is not successful.

24. CONDITION PRECEDENT

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor of the United States Virgin Islands.

25. TERMINATION

Either party will have the right to terminate this Contract with or without cause on thirty (30) days written notice to the other party specifying the date of termination.

26. PARTIAL TERMINATION

The performance of work under this Contract may be terminated by the Government, in part, whenever the Government shall deem such termination advisable by providing thirty (30) days written notice to the Contractor. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the thirty (30) day notice.

27. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

28. CONFLICT OF INTEREST

(a) Contractor covenants that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

(b) Contractor further covenants that it is:
(1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or

(2) a territorial officer or employee and, as such, has:
   (i) familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
   (ii) not made, negotiated or influenced this Contract, in its official capacity; and
   (iii) no financial interest in the Contract as that term is defined in section 1101(1) of said Code chapter.

29. NOTICE

Any notice required to be given by the Terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

**GOVERNMENT**
Anthony D. Thomas  
Commissioner  
Department of Property and Procurement  
8201 Sub Base, Suite 4  
St. Thomas, VI 00802

Joseph B. Boschulte  
Commissioner  
Department of Tourism  
2318 Kongprindsens Gade  
St. Thomas, VI 00802

**CONTRACTOR**
David Burgess  
President  
Miles Partnership, LLLP  
6751 Professional Pkwy W Ste 200  
Sarasota, FL 34240-8450

30. EFFECTIVE DATE
The effective date of this Contract shall be the day of execution of the Contract by the Governor of the United States Virgin Islands.
31. LICENSURE

The Contractor covenants that it has:

(a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and

(b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

32. OTHER PROVISIONS

Addenda I, II, III and IV attached hereto are a part of this Contract and are incorporated herein by reference.

33. DEBARMENT CERTIFICATION

By execution of this contract, the contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT". In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

34. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offence.

35. INSURANCE

Contractor shall maintain the following insurance coverages during the term of this Contract

a) COMMERCIAL GENERAL LIABILITY: Commercial general liability insurance, in a form acceptable to the Government, on a "per occurrence" basis with a minimum limit of not less than one million dollars ($1,000,000.00) for any one person per occurrence for death or personal injury and one million dollars ($1,000,000.00) for any one occurrence for property damage. Insurance policy(ies) shall name the Government of the Virgin Islands as the certificate holder and additional insured via an endorsement.
b) PROFESSIONAL LIABILITY: Professional liability insurance, in a form acceptable to the Government, which covers the services being performed under this Contract, with policy limits of not less than one million dollars ($1,000,000.00) per claim. The Government shall be listed thereon as a certificate holder.

c) WORKERS’ COMPENSATION: Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.
IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES:

[Signature]
Jay Seallen

CONTRACTOR

[Signature]  12/26/2020
David Burgess, President
Miles Partnership, LLP

(Corporate seal, if Contractor is a corporation)

GOVERNMENT OF THE VIRGIN ISLANDS

[Signature]  11/23/2020
Joseph B. Boschulte, Commissioner
Department of Tourism

[Signature]  11/23/2020
Anthony G. Thomas, Commissioner
Department of Property and Procurement

APPROVED:

[Signature]  12/14/20
Albert Bryan Jr.
GOVERNOR OF THE VIRGIN ISLANDS

DEPARTMENT OF JUSTICE BY:  [Signature]  12/7/2020

PURCHASE ORDER NO.:__________________________

RFP No. 032-T-2020 (P)
Contract No. P026DOT21

Contractor's Initials: [Signature]
CERTIFICATE OF APPROVAL

I hereby certify that this is a true and exact copy of Contract No. P026DOTT21 entered into between the Department of Property and Procurement and Miles Partnership, LLLP.

Anthony D. Thomas, Commissioner
Department of Property and Procurement
ADDENDUM I
STATEMENT OF WORK

GENERAL PROJECT BACKGROUND INFORMATION

Revitalizing tourism as a viable tourist destination after the September 2017 Storms is critical to expanding economic opportunities and improve the fiscal position of the territory. The Department seeks to restore and reassure confidence in its tourism product and to effectively communicate that the U.S. Virgin Islands is “Open for Business” as a premier tourist destination through the implementation of an effective marketing plan and campaign.

STATEMENT OF WORK

The Contractor will develop and implement a Marketing Campaign for the USVI. Work will be done with the USVI Department of Tourism to develop and execute a tourism marketing strategy and media placement campaign to drive awareness of, and travel to, the US Virgin Islands. Deliverables and impacts must be quantifiable and measured to support long term economic recovery of the territory’s tourism industry and related businesses negatively impacted by Hurricanes Irma and Maria.

The following outlines the requisite statement of work and responsibility of Contractor to be performed:

- Position the USVI in the US market as well as current and potential foreign markets as open for business and ready to welcome visitors;

- Provide campaign concepts for the destination post hurricane recovery for St. Croix, St John and St. Thomas;
  - Initial concepts to be submitted for review within 45 days of contract execution
  - If submittals not approved, additional concepts expected for review no later than 30 days after department’s request.

- Develop a media placement strategy to showcase the destination;
  - Expected to department for review at least 10 days prior to media buying plan

- Provide a range of media placement services;

- Coordinate efforts with the Department’s Public Relations teams for a cohesive marketing strategy;

- Coordinate Media Planning, Buying Trafficking, Implementation and reporting;
  - Submit media buying plan within 30 days of marketing plan approval by Agency Head

- Develop earned Digital Media content;

- Provide Social Strategy & content management;

RFP No. 032-T-2020 (P)
Contract No. P026DOTT21

Contractor's Initials: [Signature]
• Provide Strategic planning for on-going advertising campaign;
• Implement approved advertising concepts consistent with positioning USVI and the unique role each island plays;
• Identify and provide ways in which USVI can better leverage its many tourism assets with the goal of heightening awareness of each of the Island’s unique assets;
• Monitor effectiveness of campaigns, and adjust as feedback warrants;
• Ensure all tactics can be measured, and develop the matrix with the DOT to ensure key performance indicators (KPI) are met;
  o Pursuant to implementation and launch of approved marketing campaign, provide monthly reporting, within ten (10) days of the completion of the preceding month, on target results of agreed upon KPIs
• Produce and provide creative briefs for marketing communications highlighting post hurricane recovery – consumers and trade (travel agents, cruise agents, meeting planners);
• Submit Disaster recovery marketing plan within 180 days of contract execution.
  o Implementation to follow within 15 days of approval
• Review, modify (if necessary) and implement newly developed anthem television spots, print and video (tailoring each to specific publications), newspaper ads, trade ads, outdoor, Internet, banners, etc.;
• Provide customer relationship management services to include developing a strategy to engage consumers and collect data to effectively manage customer relations through collected data.
• Provide a detailed media plan, track media exposure,
• Provide project reports every two weeks and status calls on plan and campaign progress
  o Quarterly in-person meetings to be held in the territory and/or at feasible location agreed upon by Agency Head.
ADDENDUM II
TERMS OF COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Statement of Work), agrees to pay Contractor a sum Not-to-Exceed (NTE) Two Million Thirteen Thousand Five Hundred Seventy-five dollars and 00/100 cents ($2,013,575.00) in accordance with the provisions set forth in Addendum II and Addendum III attached hereto and made a part of this contract.

Said compensation shall be payable for actual services provided and upon the completion, review and acceptance of each deliverable as delineated in Addendum I (Statement of Work) by the User Agency.

Pursuant to the Community Development Block Grant- Disaster Recovery-(CDBG-DR) funding awarded by the Housing and Urban Development (HUD), invoices shall be submitted to the User Agency-Department of Tourism for actual hours worked and documented travel related expenses incurred for initial review and approval. User Agency shall forward approved invoices for payment within ten (10) days of receipt to the Grantor Agency-Virgin Islands Housing Finance Authority (VIHFA) for final approval and payment.

Invoices shall be submitted to the User Agency- (Department of Tourism) on a monthly basis by the 1st day of the month following the work performed.

Invoices shall consist of a cover page including the following information:

- Name and address of the contractor.
- User agency official to whom invoice should be sent (Name, Title, Agency).
- Invoice date and invoice number.
- Contract number/task order number.
- Summary of the services performed and applicable time frame.
- Name and address of contractor official to whom payment is to be sent.
- Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.
- Taxpayer Identification Number (TIN/DUNS).
- Electronic funds transfer (EFT) banking information.
- Shipping and/or payment terms.
Detailed information supporting the invoices shall include the following information:

- **Personnel time**
  - Resource Name
  - Title
  - Rate
  - Hours worked per day
  - Description of tasks performed for each day worked

- **Materials, Supplies and other services**
  - Receipts/invoices – displaying description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

- **Travel Expenses, as applicable**
  - Air travel receipts
  - Car rental receipts
  - Lodging receipts
  - Applicable per diem allowances

Invoices shall be sent via mailing address or email address to:

**Mailing Address:**

Joseph Boschulte, Commissioner  
Attn.: Office of Administration & Management  
USVI Department of Tourism  
2318 Kronprindsens Gade  
St. Thomas, VI 00802

**Email Address:**

To: jboschulte@usviturism.vi  
Joseph Boschulte, Commissioner  

Cc: carolyn.stokes-smith@dot.vi.gov  
Carolyn Stokes Smith, Director  
Administration & Management

Upon User Agency’s receipt of Contractor’s invoices, User Agency shall forward Contractor’s undisputed invoices to VIHFA for payment. Payment of such invoices shall be made within forty-five (45) days following User Agency’s receipt of each of Contractor’s invoices (the “Payment Due Date”).

In the event payment of an undisputed invoice is not made within an additional thirty (30) days following the original due date, the Contractor, upon delivery of a written Notice to User Agency, in addition to the right to terminate the Contract, shall have the right to suspend the Work until such undisputed invoice is paid in full.
Included in the total compensation and cost analysis, travel related expenses shall not exceed Seventeen thousand five hundred dollars and 00/100 cents ($17,500.00) in accordance with Paragraph 4- “Travel Expenses” of this contract.

Addendum 111 attached hereto and made a part of this contract provides a cost analysis ceiling price of Two Million Thirteen Thousand Five Hundred Seventy-five dollars and 00/100 cents ($2,013,575.00). Cost allocation is as follows:

- Fees in the amount of Three hundred forty-three thousand five hundred and seventy-five dollars and 00/100 cents ($343,575.00) and;
- Applicable Out-of-Pocket expenses in the amount of One million six hundred-seventy thousand dollars and 00/100 cents ($1,670,000.00)
ADDENDUM III
COST PROPOSAL

Contractor's compensation shall be in accordance with the flat rate cost proposal submitted and accepted by Government as outlined in Addendum III (Cost Proposal) attached hereto and made a part thereof.

(Next Page)
### ADDENDUM III- COST PROPOSAL continued

#### Department of Tourism Disaster Recovery Marketing Campaign RFP-032-T-2020(P)

#### KEY ROLES & RESPONSIBILITIES

<table>
<thead>
<tr>
<th>ROLE</th>
<th>RESPONSIBILITY</th>
<th>LABOR</th>
<th>ONGOING EXPENSES</th>
<th>TOTAL</th>
<th>COMMENTS/ SUPPORTING DETAILS</th>
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<tbody>
<tr>
<td>Senior Account Director</td>
<td>Oversees the campaign, setting priorities and reviewing campaign outcomes.</td>
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</tr>
<tr>
<td>Account Director</td>
<td>Manages the campaign, setting priorities and reviewing campaign outcomes.</td>
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</table>
| Client Engagement Manager   | Focuses on relationship building, media
distribution, and
campaign strategies.                                                        |       |                                                       |       |                             |
| Analyst Manager             | Focuses on
campaign
distribution and
campaign
strategies.                                                                       |       |                                                       |       |                             |
| Senior Manager              | Focuses on
campaign
distribution and
campaign
strategies.                                                                       |       |                                                       |       |                             |
| Director                    | Focuses on
campaign
distribution and
campaign
strategies.                                                                       |       |                                                       |       |                             |
| Copy Editor                 | Focuses on
campaign
distribution and
campaign
strategies.                                                                       |       |                                                       |       |                             |
| Developer                   | Focuses on
campaign
distribution and
campaign
strategies.                                                                       |       |                                                       |       |                             |

#### START-UP COSTS

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<th></th>
<th>DESCRIPTION</th>
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<td>Equipment &amp; Supplies for On-Island Offices</td>
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<tr>
<td>Mobilizations &amp; Office Set-up of On-Island Locations</td>
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<tr>
<td>Other Necessary One-time Costs</td>
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#### Other Out-of-Pocket Costs

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<th>UNIT</th>
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<td>Radio Commercial Production Costs</td>
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<td>Media Plan (see attached details)</td>
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<td>Print Ad Insertion Buys</td>
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#### Media Buys

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#### Grand Total

Grand Total: $2,015,579.00

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RFP No. _032-T-2020(P)_
Contract No. _P028DOTT21_
ADDENDUM IV
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 http://www.hud.gov/offices/adm/hudclips/forms/files/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 contract shall be deemed to be inserted herein and the contract 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 contract shall forthwith be physically amended 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.

RFP No. 032-T-2020 (P)
Contract No. P026DOT21

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Contractor's Initials
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 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:

i. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;

ii. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;

iii. 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;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises; and

v. 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 CONTRACT**

Contracts or Contracts for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small
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 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 2 C.F.R. Part 215 and 24 C.F.R. § 85.36 (or 84.42, if applicable)). 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 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:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,
(vi) 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

(vii) 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** (Applicable to contracts exceeding $10,000)

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, Contracts, 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 the 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 the VIHFA from the Subcontractor is determined.

23. **TERMINATION FOR CONVENIENCE** (Applicable to contracts exceeding $10,000)

The VIHFA may terminate this contract at any time by giving at least 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** (Applicable to contracts exceeding $10,000)


**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:

i. Recruitment, advertising, and job application procedures;

ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

iii. Rates of pay or any other form of compensation and changes in compensation;

iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

v. Leaves of absence, sick leave, or any other leave;

vi. Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

viii. Activities sponsored by the contractor including social or recreational programs; and

ix. 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.

D. 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).

E. The Contractor/Subcontractor will notify each labor organization or representative of workers with which it has a collective bargaining Contract 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.

F. The Contractor/Subcontractor will include the provisions of this clause in every subcontract or purchase order in excess of $10,000, 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**  
(Applicable to construction contracts and subcontracts exceeding $10,000)


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 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.

D. The Contractor/Subcontractor will send to each labor union or representative of workers with which he has a collective bargaining Contract 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.

E. 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.

F. 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.

G. 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.

H. 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 (Applicable to construction contracts exceeding $10,000)

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**
(Applicable to contracts exceeding $100,000)

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 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 Environmental Protection Agency (EPA) pursuant to 40 C.F.R. Part 15, as amended.

B. Contract 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. Contract 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. **LOBBING** (Applicable to contracts exceeding $100,000)

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 Contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Contract.

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

3. 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 Contracts) and that all subrecipients shall certify and disclose accordingly.

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 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**

(Applicable to construction and facility improvement contracts exceeding $100,000)

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 (As required by applicable thresholds)**

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 recipients 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 Contract 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.
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 recipients’ 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.

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-DR 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.

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.

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-DR 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 review, decision making and actions pertaining to a project of a recipient.

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-DR 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. To avoid duplicative assistance and potential de-obligation of funding, Subrecipient must utilize all possible funding sources before applying CDBG-DR dollars to a project. CDBG-DR programs are typically implemented after temporary disaster assistance programs, such as FEMA Individual Assistance which are not intended to make someone whole. 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 FR 40314; however, the provision to expend one hundred percent (100%) of the total allocation of CDBG-DR 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 FR 5844. Additionally, per
83 FR 5844, the provisions at 24 C.F.R. § 570.494 and 24 C.F.R. § 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 recipient's control acquired in whole or in part with CDBG funds in excess of $25,000.00. The recipient 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 recipient may either retain or dispose of the property for the changed use if the recipient'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, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR 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-DR 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 recipient 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.

(3) The plan shall provide one-for-one replacement units to the extent required by § 42.375.

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-DR funds are welcomed throughout the duration of the grant. The Citizen Participation Plan is posted as a stand-alone document at www.viha.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.